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THE PCB CONTROL ACT OF 1988

HEARING

BEFORE THE

SUBCOMMITTEE ON
HAZARDOUS WASTES AND TOXIC SUBSTANCES

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 2693

THE PCB CONTROL ACT OF 1988

AUGUST 11, 1988

Printed for the use of the
Committee on Environment and Public Works

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CONTENTS

OPENING STATEMENTS

Page
Baucus, Hon. Max, U.S. Senator from the State of Montana 1
Reid, Hon. Harry, U.S. Senator from the State of Nevada 3

WITNESSES

Bowles, Alvin, Chief, Hazardous Waste Division, Maryland Department of the Environment 17
Clinger, Hon. William, a Representative in Congress from the State of Pennsylvania 5
Craddock, John, chairman, PCB panel, Chemical Manufacturers Association 32
  Written statement 91
Davis, Arthur A., Secretary, Pennsylvania Department of Environmental Resources 14
  Written statement 69
Denit, Jeffrey, Deputy Director, Office of Solid Waste, Environmental Protection Agency 11
  Written statement 55
Florio, Hon. James, a Representative in Congress from the State of New Jersey 8
  Written statement 42
Fortuna, Richard C., executive director, Hazardous Waste Treatment Council 30
  Written statement 80
Rosenthal, Steven, National Electrical Manufacturers Association 34
  Written statement 100
Siedhoff, Thomas, Manager, Environmental Services, Union Electric Co 36
  Written statement 112
ynar, Hon. Mike, a Representative in Congress from the State of Oklahoma 4
Additional material: S. 2693 124

THE PCB CONTROL ACT OF 1988

THURSDAY, AUGUST 11, 1988

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON HAZARDOUS WASTES
AND TOXIC SUBSTANCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:49 a.m., in room 406, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the subcommittee) presiding.

Present: Senators Baucus, Reid, and Chafee.

OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. The Subcommittee on Hazardous Wastes and Toxic Substances will come to order.

I apologize to the witnesses and to the others who are here for the delay in beginning the hearing. We had a vote commencing about 10 minutes ago which was the cause of the delay.

The subject of today's hearing is PCBs. We have known for more than 50 years that polychlorinated biphenyls or PCBs are a threat to human health. They are a carcinogen that cause birth defects, and they were first discovered in 1966 when a Swedish scientist found evidence of PCBs in the environment.

We later became alarmed in the early 1970's when striped bass in the Hudson River were shown to contain high levels of PCBs. Contamination has since been found along the Atlantic, Pacific, and Gulf coasts as well as the Great Lakes.

In 1975 and 1976 when the EPA tested samples of mothers' milk from around the country, detectable levels of PCBs were found in all cases. As a result, Congress passed the Toxic Substances Control Act in 1976 and banned the production of new PCBs and required the EPA to regulate the use of existing PCBs.

The goal of the legislation was to dispose of approximately 1 billion pounds of PCBs that were produced between 1929 and 1976. Unfortunately, EPA's performance as well as that of others have fallen far short of that goal.

During reauthorization of the Resource Recovery and Conservation Act of 1984, EPA Administrator Lee Thomas recognized the shortcomings of his agency's PCB program. In order to strengthen the performance, he said, he is willing to move the program to RCRA from TSCA. EPA even set up a task force to look into the move.

The group worked hard and came up with recommendations. That is where it stopped.

While EPA has acknowledged the inadequacies of the PCB program, the agency has done little to improve it. The number of EPA personnel committed to the program has dwindled, and EPA hasn't asked for any additional help.

Meanwhile, the magnitude of the problem we face from PCB contamination is becoming more apparent. For example, last year, in Texas, Eastern Pipeline admitted it had been illegally disposing of PCB's in unlined earthen pits in 14 States. It will cost almost $400 million to clean up these sites.

Texas Eastern wasn't trying to dispose of PCBs surreptitiously. In fact, it filed forms with EPA stating exactly what it was doing, but, apparently, no one at EPA paid any attention.

It wasn't until Texas Eastern made a point of specifically and directly informing EPA as to what it was doing and after the story was leaked to the New York Times that the EPA finally took action, but the problem doesn't stop there. Poorly policed and inadequately managed PCB disposal sites are now becoming Superfund sites.

Congressman Mike Synar who is with us today has spent a considerable amount of time and attention to investigating EPA's lack of enforcement. The fruit of his labors is H.R. 3070 which, along with my bill, is the subject of today's hearing. Before turning to the legislation, however, I want to focus just a minute on another dereliction of EPA enforcement.

A classic example is the Martha Rose Chemical site in Holden, Missouri. Rose Chemical was taking PCB's from utility companies and virtually pouring them on the ground. By the time this was discovered in 1986, the company was gone, leaving almost 14 million pounds of abandoned PCB's leaking into the soil.

The dump is now a Superfund site, and the utilities who paid Rose Chemical in good faith are now paying again to have the mess cleaned up. I first learned of this case when nine rural electric coops in my State were named PRP's or Principal Responsible Parties for the Rose Chemical site. I know that eight co-ops from our chairman's State of North Dakota are on the same list, and I expect that hundreds of small cooperatives and larger industrial utilities are also probably in the same boat.

These companies and, ultimately, their customers are now going to pay twice for something that should have been done right the first time. The irony is that EPA actually recommended Rose Chemical as a permitted PCB disposer.

The legislation passed by the House and now pending before this committee is a major step in addressing this kind of deplorable performance by the Environmental Protection Agency. It is a major step forward and one for which I highly commend Congressman Synar and Congressman Clinger.

It corrects a number of shortcomings. First, it sets up a tracking system for disposing of PCBs. Companies would be required to follow the compounds from the time they are received until final disposition.

Second, regulations will be developed for transporting and storing PCBs. Third, disposal companies will have to show financial responsibility and contingency plans for handling spills or other accidents. Finally, companies will have to present their plans for closing disposal sites and monitoring them after they have been shut down.

While these provisions are modeled on RCRA and take a step in the right direction, I am personally concerned that they won't entirely solve the problem. The real issue here is lack of commitment by the Environmental Protection Agency in putting enough manpower into adequately implementing the program. EPA has already shown it cannot handle what is now required. I fear an expanded EPA program will likely result in more Texas Eastern's where unread permits and uninspected facilities will end up in undetected violations.

The final outcome would be no reduction in threats to the public health and environment.

The legislation I have introduced builds on the House-passed bill and is meant to address the concern of inadequate manpower at EPA. Specifically, I am proposing that any new regulations encourage partnerships between the Federal Government and the States. I believe that is the most effective way to make sure we get the job done, specifically, by making it clear that States can regulate PCB's under RCRA.

I look forward to hearing from today's witnesses, and I especially welcome Congressman Mike Synar and Congressman Clinger for their very hard work and yeoman's efforts on these bills.

Senator REID. Mr. Chairman?

Senator BAUCUS. The Senator from Nevada is recognized.

OPENING STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM THE STATE OF NEVADA

Senator REID. Thank you.

Mr. Chairman, before I came to Washington, I was an attorney doing trial work, and I had a case that was quite controversial in Nevada dealing with someone who had been exposed to PCBs. At that time I learned that PCBs were extremely dangerous to people.

I am thankful to you, Mr. Chairman, for directing the subcommittee's attention to the question of whether PCBs should be regulated and how they should be regulated, that is, under the Toxic Substances Control Act or under the Resource Conservation and Recovery Act.

As we know, PCBs were manufactured initially, as I understand it, in the 1930's for use in electrical equipment, and it has been found that the chemicals used pose a serious danger to public health. It persists in the environment for decades, can cause skin cancer, lesions, reproductive, gastric, liver, and nervous system disorders.

The passage of the Toxic Substances Control Act of 1976 banned the manufacture of PCBs. However, today it is estimated that some 500 million pounds of PCBs remain in storage or in use primarily in electrical equipment.

The need for effective regulation of PCB is clear since the deadline for the retirement of PCB transformers is upon us. Several hundred million pounds of this dangerous substance must be disposed of once the remaining PCB capacitors and transformers are taken out of use.

The House has passed legislation to close existing loopholes in the regulation of PCBs under the Toxic Substances Control Act. Today, we will examine the House approach as well as legislation formulated by our subcommittee chairman, Chairman Baucus, which would shift the regulation of PCBs from TSCA to RCRA.

I look forward to the testimony of my former colleagues today, Congressman Synar and Congressman Clinger. We know of their concern in this regard, and I certainly look forward to the testimony and appreciate your being here before our subcommittee.

Senator BAUCUS. I thank the Senator. I might add, too, that the Senator from New Jersey, Senator Lautenberg, wished he could be here today. He has a very direct and strong interest in this matter, but he is unable to be here.

So, with that, which one of you would like to start?

Mr. SYNAR. Max, let me start.

STATEMENT OF HON. MIKE SYNAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. SYNAR. First of all, thank you for having these hearings. Hopefully, this is the beginning of our getting to a final resolution of this issue this year.

Harry, it is good to see you again.

Max, you outlined the problem. The site at Holden, Missouri is a very good example of the problem that exists. I might fill you in that yesterday, Bill Clinger and I held a second or third hearing on this issue, and we found out some new things that we are beginning to see emerging in the PCB disposal industry particularly in the area of the brokerage business, probably organized crime getting into it. It is a big buck, quick cash type of situation.

We tracked through a number of shell corporations that existed not only in the Holden, Missouri case but in some other areas of the country. So, we are now finding that people are learning how to launder wastes as they have learned how to launder money in organized crime. So, this thing is taking on proportions now that we hadn't even dreamed of when we began these hearings almost three years ago.

You outlined the bill. It does three basic things. It requires uniform manifesting, permitting of brokers, and, finally, financial responsibility requirements.

The reason, I think, that we need to move H.R. 3070 is this. First of all, it has been the product of ten months of negotiations between industry and the environmentalists. This is a consensus bill correcting the known problems out there that we need to deal with.

You clearly pointed out why we need to act this year, this session, this 100th Congress, and that is that the peak PCB loads are coming on in 1988 through 1990. By the time we get back here in the 101st Congress, we are going to be dealing with literally millions of tons of PCB material, and if we have not set up these requirements, we will be seeing more and more Holden, Missouri's.

Let me address the one thing that you have added to your bill which is the provision moving PCB regulation into RCRA in two years. Whether or not that is good or bad—and I won't go into the merits of that—the fact of that matter is, as you know, we have to reauthorize RCRA next year. The problem that we see is that that has caused some controversy that would hold up what I think are the basic merits of H.R. 3070.

That is why I hope that we can move forward at least with the minimum of what we have done in our bill so that we can get this thing in place.

With respect to the whole issue of RCRA, let me just say two things. First of all, we believe that the State authorities are not a problem. We think that section 18 of TSCA is clear and that the States have the authority to regulate PCBs. We also found that 18 States currently do so. The courts have upheld the States rights and EPA has supported the States position.

The second thing is that we have a consensus on H.R. 3070. With this consensus, we can fix the most serious and immediate problems now which is exactly what you want, as you pointed out, through the Texas Eastern case.

So, I hope that we can move forward. I hope we can get to conference, and we can work out these problems. If we don't, you and I and the rest of us are going to be sitting here probably a year or year and a half from now, and we are going to probably have about 20 to 30 million tons more of this material scattered through a bunch of Holden, Missouri's, and we are going to be looking at hundreds of millions of dollars for trying to clean this stuff up as we were in the Texas Eastern case.

I would like to call on Bill, because Bill has been a team partner on this all the way through. It has been a bipartisan effort. It passed under suspension in the House which shows you the support that we do have over in the House for this.

Senator **Baucus**. Congressman Bill Clinger, with that introduction, please proceed.

STATEMENT OF HON. WILLIAM CLINGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. **Clinger**. Thank you very much, Mr. Chairman.

I, too, would like to commend you and thank you for holding these hearings and focusing on an issue that really is, I think, destined to become much more prominent in the years ahead as we are going to see enormous amounts of this substance that are going to have to be disposed of.

Like Senator Reid, my awareness of the severe danger represented by PCBs goes back a long way. Literally three months after I came to Congress, I was informed that a shed containing leaking barrels of PCB located on an earthen floor were leaking directly over the town's water supply and threatening the entire town's water supply. This was before Superfund or anything else, so it was a rather crash program to try to get that removed and straightened out. This incident really brought home to me the fact that this is indeed a serious problem.

As Mike has indicated, we held a series of oversight hearings in the subcommittee, and that demonstrated to me, at least, that my situation was not unique. In fact, we have literally hundreds of

Youngsvilles throughout the country. Clearly, there are loopholes in the disposal procedures for PCBs which have to be closed.

That led me to join with Chairman Synar and Congressman Wheat and Congressman Skelton, two Missouri Congressmen who have been directly impacted by this, to try to take some effective action to address these loopholes.

As Mike has indicated, we don't view this as a final solution, and we have never tried to represent that this was a final solution. However, I think it is a responsible measure and certainly is a necessary measure which can be supplemented almost immediately. However, we really need to take this step now. If we wait, if we get bogged down in the whole TSCA/SMCRA controversy, we could lose the advantage we have now to move a bill.

This is a consensus bill. It is endorsed by the GAO. It is endorsed by various State environmental protection agencies, a number of environmental groups such as the Natural Resources Defense Council, and industry groups such as the American Public Power Association.

Mike alluded to the hearing we held yesterday which demonstrated that this has become a fertile ground for invasion by organized crime. I thought it was interesting that we had some testimony from law enforcement officials from New Jersey who testified that the current loophole on PCB brokers, the loophole which H.R. 3070 closes, is a perfect point for the infiltration of organized crime. There is no present way to track where this stuff comes from or where it goes.

Mike and I are very appreciative of the concerns of those who believe that PCBs should be moved under RCRA, and that may well be what should be done. However, I would just note the statement by a representative of the Natural Resources Defense Council with regard to this. She said:

> These issues need to be examined and resolved in the near future, but their resolution should not delay imposition of basic tracking and handling requirements for the PCB disposal activities that are currently underway.

You have alluded to the Texas Eastern PCB dumping as evidence that we really should consider moving the regulation of PCBs to RCRA. Being from Pennsylvania which was one of the States where we had Texas Eastern involved in dumping, I am certainly very concerned about this incident. But, I would also agree with an editorial that appeared in a paper in my district arguing that irrespective of the Texas Eastern situation, passage of this bill was "a much needed step toward better protecting the public."

As Mike has already indicated, I think we can address this and should address it next year when we are involved with the reauthorization of RCRA. So, I would just conclude by supporting my chairman and urging quick and speedy passage of H.R. 3070.

Thank you, Mr. Chairman.

Senator BAUCUS. I thank you both.

I have basically two questions. The first is in regard to potential organized crime.

In any of the hearings you have had, I would like to know what evidence you have of potential alleged criminal violations and, second, the degree to which there are proper referrals to either the

U.S. Attorney's office or the Justice Department or the relevant State law enforcement agencies.

Mr. SYNAR. What we found yesterday were two things. First of all, a number of the people who are involved in the business, whether it be Holden, Missouri with PCB, Inc. or CB Oil or Envirosure, have known criminal records, have been known to have alleged activities ranging from narcotics to prostitution to illegal gambling, et cetera. People who are in the management areas of these corporations had been convicted of falsifying records or committing other types of crimes.

Some have been prosecuted. EPA has been working with the U.S. Attorneys throughout the country to do some investigations in New York, Missouri, and elsewhere.

One of the things we found of interest yesterday, is that EPA's own law enforcement arm sometimes does not supply the information to the regulatory side of EPA in order that they can use that information to determine whether or not permits should be issued or revoked. We dressed down a couple of the people in the law enforcement area for not sharing that information that was coming from law enforcement sources.

Mr. CLINGER. A number of these investigations are in progress. We were really getting, in some cases, raw data from intelligence sources which were the result of investigations that are going on right now and, hopefully, will result in indictments in the near future.

Senator BAUCUS. The second question regards a provision in the bill that I have introduced deeming PCBs hazardous waste and therefore entitling States to regulate PCBs under RCRA. As I understand it, Congressman Synar, you are saying that, in your view, the present law is unambiguous, that is, that States currently have the authority to regulate PCBs under RCRA and, as a consequence, either the provision that I have introduced in my bill is not necessary or, second, that it is going to cause undue political problems in allowing my bill or the combination of the bills to become law. It is unclear as to which it is.

Mr. SYNAR. Well, first of all, it is not RCRA, it is TSCA. I said that they had it under TSCA, not under RCRA, and that 18 States have taken advantage of section 18 of TSCA to do that.

Secondly, where the States have gone to court to demand their individual rights, EPA has supported that position and so have the courts.

What we are saying, Max, is this——

Senator BAUCUS. It is under TSCA?

Mr. SYNAR. It is under TSCA, not RCRA. What it comes down to, the bottom line, is this. You may have a very good idea. In fact, I am not sure Bill and I disagree with you, but we can't get it through this year. It is just as plain and simple as that. It breaks the consensus that we have between the environmentalists and industry.

Mr. CLINGER. That was what was hanging us up.

Mr. SYNAR. That is exactly right. The problem is that if we break that consensus, by the time we get back here, we are going to have probably tens of millions of tons lying out there.

Senator BAUCUS. Let me get this straight. You think that States have authority currently under TSCA

Mr. SYNAR. Yes.

Senator BAUCUS. But not under RCRA. Do you think the States have the authority currently under RCRA?

Mr. SYNAR. Do I think they do?

Senator BAUCUS. Yes.

Mr. SYNAR. No.

Senator BAUCUS. There may be some confusion here, because it is my understanding that the States' current regulatory authority is under RCRA.

Mr. SYNAR. That is correct. I would like to correct the record. You are right.

Senator BAUCUS. And if those 18 States or the bulk of them currently regulate under RCRA and, as you have said, that has been upheld, what is the problem in making that authority still more clear?

Mr. SYNAR. The problem is that it breaks the consensus between industry and the environmentalists that we need to get this bill passed this year with the least amount of problems. Basically, both groups believe that those clarifying things which you want to accomplish should be addressed during the normal procedure which is the reauthorization of RCRA next year.

As you clearly point out, they probably have that authority, and clarifying that and making sure it is there probably is more appropriately done in the forum of next year when we reauthorize RCRA.

Senator BAUCUS. Bill, do you have any comments?

Mr. CLINGER. Just one, and that is I think under the bill you have introduced, you propose to keep existing regulations in place for up to two years to make a careful determination of what needs to be changed.

Senator BAUCUS. That is correct.

Mr. CLINGER. I would just point out that in the timing of this, we anticipate that the major load we are going to need to be regulating is going to occur within that two-year period.

Senator BAUCUS. Thank you.

We are honored today to have another very hard worker in this area of Superfund, toxic wastes, and wastes generally, and, included within that, the disposal of PCBs, Congressman Jim Florio.

Jim, we are very happy to have you here. You walked in just at the right moment.

STATEMENT OF HON. JAMES FLORIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. FLORIO. Thank you very much, Senator.

Let me express my appreciation and my apologies for being a bit late. We are having a hearing on a different matter in the House.

I have a statement that I would like to put into the record in the interest of conserving the committee's time and would just like to highlight a couple of points.

Mr. Chairman, as I think we all know, PCBs are extremely dangerous. I am not going to go through a recitation of the problem. I know that this committee knows about PCBs, and the hazards they cause.

When the Congress was discussing, in the conference committee in 1984, amendments to the Resource Conservation and Recovery Act which, is the basic law that provides for the prospective disposal regulatory system for hazardous wastes. Mr. Thomas EPA Administrator, promised that they would bring PCBs under the requirements of RCRA which is the logical thing to do since every other hazardous waste is regulated pursuant to RCRA. PCBs, as a result of some idiosyncracies of the legislative process are regulated under TSCA, the Toxic Substances Control Act.

Needless to say, as I think this committee knows, EPA has done nothing to impose the RCRA requirements on PCBs, as the agency told Congres they would do. The current regulatory system for PCB's is totally inadequate.

We can no longer wait for EPA to do what they have failed to do. As I suspect others have said to you, there is an imminent problem that is coming upon us. 750 million pounds of PCBs are still in use. In October of this year, several hundred million pounds will be required to be disposed of in accordance with statutory law. They will be coming out there onto the field, and they will have to be disposed of in a safe and efficient manner.

I would like to commend you, Mr. Chairman, for introducing a piece of legislation that will put PCBs where they belong, under the requirements of RCRA. I would also like to commend my two Congressional colleagues for taking a role in trying to lift the level of discussion on this matter to a level that we can focus upon as a nation and, certainly, as a Congress.

I think it is particularly fortunate that the bill you have introduced, Senator, applies all of the RCRA requirements to PCBs which controls all other hazardous waste. To do less is to ignore the obvious problems associated with this PCB disposal question.

Unfortunately, the House-passed legislation is not an adequate response. There are three major deficiencies in the House-passed bill.

First, it fails to allow the States to pass and to strengthen their own laws for dealing with PCBs, as the States are allowed to do with every other hazardous waste that is regulated under the Resource Conservation and Recovery Act.

Second, the bill fails to allow the States to enforce the Federal laws as the States are allowed to do with every other hazardous waste under RCRA. Having seen documentation of the failure of EPA to enforce these types of laws, we certainly want to have, as backup authority the ability of the States to enforce these laws when the Federal Government fails to do so.

Third, it does not even allow EPA to order corrective action when they discover a problem with PCB disposal. This means that EPA may discover a problem, and won't be able to do anything about it as they would be required and able to do under the Resource Conservation and Recovery Act for all other hazardous wastes.

My argument with my colleagues on the House side is that I would prefer to do what you have done Mr. Chariman, with introduction of your bill, and get rid of this exception for PCBs and deal with them as we deal with all other hazardous wastes. In the alternative, if someone prefers not to do that and you are going to regulate PCB's under TSCA, let's provide at least the same comparable authority under TSCA that we have under RCRA. It is not as neat as it would be to deal with it under RCRA, but if you are going to have TSCA, at least give all the protection that you have under RCRA.

Accordingly, there were amendments that I offered that were not accepted that would do that. I would ask that one approach or the other be the route that we take. My preference is the one that you have taken.

You will undoubtedly hear that the House bill is the best that can be done this year and that there is a fragile coalition that is supporting it. To do more would somehow derail the efforts to deal with this problem.

I don't believe that to be an acceptable response as to why we should pass an inadequate response. The House bill pretends that we are dealing with PCBs while, in fact, we are really not.

I think it is important, Mr. Chairman, that we go forward in the way that you have suggested.

I have attached to my testimony and would ask that it be included in the record copies of letters from the Attorneys General of eight States supporting the amendments that I have offered to the House bill to provide the States with the authority to pass their own laws, to enforce Federal law, and not to have the Federal Government preempt the ability of the States to deal with these proposals.

Senator BAUCUS. Without objection, they will be included.

Mr. FLORIO. As I say, whichever approach is taken, the TSCA approach or the RCRA approach, we should have the same protection that are in the RCRA standard for all other hazardous wastes.

I appreciate the opportunity to say a few words here, and I certainly would be more than happy to respond to any questions you have.

Senator BAUCUS. Thank you very much, Congressman. You have hit the nail right on the head. You anticipated all the comments that have been stated thus far before your arrival, and thank you very much for that cogent and compelling statement.

Senator Reid?

Senator REID. Mr. Chairman, I have reviewed the testimony which will be given here today, and one of the things that perhaps Congressman Florio or Congressman Clinger could assist me with is, what are we doing to determine what PCBs exist other places in the world? This is such a complex intermingling of the environment that we have today that I would be interested if either of you know what has been done to assess PCBs around the rest of the world?

Mr. FLORIO. Mr. Chairman, the answer is that I do not know what the Environmental Protection Agency has done. Presumably, the would be the people in charge of making those types of determinations, and I do not know what it is they are doing internationally.

I think we all are aware of the fact that more and more of the problems that we have environmentally are global in dimension and that there should be a higher degree of interaction between our environmental agency and others around the world.

Incidentally, in the House, I have introduced legislation and the comparable legislation on this side has been introduced, by Sen. Durenberger to lift EPA to a cabinet level agency. In large measure, the rationale for the up grading is to give our agency comparable negotiating authority with the ministries of environmental concerns around the world so that there can be a more even handed negotiating posture on many of these global environmental problems.

But the direct answer to your question is that I am not informed as to what EPA has done, if anything, in attempting to evaluate the international dimensions of the PCB problem.

Senator **Reid**. Testimony given prior to your arrival indicated that organized crime may be involved in disposing of or somehow helping those people who have PCBs to get rid of it, and one of the easy places to get rid of it, of course, would be if they could figure out some way to ship it to the southern part of this hemisphere or some Third World nations.

Mr. **Florio**. Incidentally, I would just say, again, as an aside, that there is other legislation which Congressman Conyers and I have introduced dealing with the whole subject of the exporting of hazardous wastes into other nations. We have found that this is happening. It is something that is not environmentally acceptable. It certainly has strong ramifications for our international relations, particularly with Third World nations, if we are going to unload our problems on people who haven't yet got a full understanding of the dimensions of the problem.

Senator **Reid**. I would be interested in that legislation. I will have my staff work with yours on that.

Thank you.

Senator **Baucus**. Thank you, Senator.

Thank you very much for coming, Congressmen. We appreciate it.

Our next panel consists of three. We have Mr. Jeffrey Denit, Deputy Director of the Office of Solid Waste with the Environmental Protection Agency; Mr. Arthur Davis, Secretary of the Pennsylvania Department of Environmental Resources; and Mr. Alvin Bowles, Chief of the Hazardous Waste Division of the Maryland Department of the Environment.

Gentlemen, welcome.

Senator **Reid**. Mr. Chairman, I have to leave and I hope to come back, but maybe the EPA representative here could supply to me individually that information that I asked for from Mr. Florio.

Senator **Baucus**. Thank you. I will present that to him as well.

Mr. Denit, why don't you begin.

STATEMENT OF JEFFREY DENIT, DEPUTY DIRECTOR, OFFICE OF SOLID WASTE, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY VICTOR KIMM AND MICHAEL J. WALKER

Mr. **Denit**. Thank you, Mr. Chairman.

With the chairman's permission, I have provided copies of my testimony for the record. So, I will read some summary remarks from that testimony.

Also, inasmuch as I am from the Office of Solid Waste and administer the RCRA program, the degree to which we get into some specific questions on the Toxic Substances Control Act—

Senator BAUCUS. Yes, I would remind each of the witnesses that, due to the constraints of time, limiting the testimony to five minutes would be appreciated.

Mr. DENIT. I may call on the assistance of Mr. Victor Kimm who is the Deputy Assistant Administrator of OPTS or Mike Walker from OECM at EPA.

Mr. Chairman and members of the Subcommittee, I am pleased to be here today on behalf of Dr. Winston Porter, Assistant Administrator for Solid Waste and Emergency Response.

EPA has spent considerable time over the past year addressing the issue of PCBs regulation under RCRA versus its administration under TSCA. My remarks today will convey some of the conclusions we have drawn on these issues.

I will close by conveying the reasons that the agency has reached the conclusion that it is desirable to continue to administer these programs under separate statutes during the peak PCB disposal period and the implementation of major new hazardous waste disposal regulations before us.

Both the TSCA and RCRA regulatory structures were enacted in statutory frameworks in 1976 to address similar widely distributed health threats. Insofar as the potential for damage to human health and the environment, there is very little to distinguish PCB waste from listed wastes under RCRA.

PCBs are persistent in the environment, not readily degradable, have been shown to cause chronic toxic effects in animals, reproductive problems, gastric disorders, and other effects. A primary distinguishing feature of PCBs is that while many or most hazardous wastes listed under RCRA continue to be produced, production of PCBs has been specifically banned by Congress.

TSCA directed EPA to establish a regulatory framework for disposal of PCBs and to phase out the existing broadly dispersed uses of these materials. Regulations addressing production, distribution, or restricted use of chemicals before they become wastes are neither envisioned nor authorized under RCRA.

The PCB program is managed by EPA with responsibilities divided between headquarters and the regional offices. Day to day management of the RCRA program is the responsibility of EPA's regional offices and the States with policy direction and oversight from headquarters.

At this time, 44 States are authorized to operate their own base RCRA programs totally in lieu of the Federal program. State authorization is specifically provided for in the statute. An illustration of the way State hazardous waste programs may differ from the Federal program is that some 18 States have exercised their option under RCRA to administer PCBs as a hazardous waste.

The TSCA program is largely managed by EPA regional offices which are responsible for permitting, compliance monitoring, and enforcement of stationary PCB facilities in their respective regions.

Permitting for mobile treatment units and technologies is from headquarters. This is a particularly important method of treatment and disposal in the PCB program. We have found that all or virtually all approved PCB landfiils and stationary incinerators are located at RCRA permitted or interim status facilities; these force those units are already subject to RCRA corrective action and other RCRA requirements.

Records of combined State and Federal RCRA actions between October of 1987 and July of this year indicate some 2,400 RCRA treatment storage disposal facilities and 4,800 generators have received compliance monitoring inspections.

Since 1985, PCB inspectors in regional offices, including the use of grant dollars by various States, have accomplished approximately 2,400 compliance monitoring inspections each year.

As Jack Moore testified yesterday before the House Subcommittee on Environment, Energy, and Natural Resources, EPA has amended its compliance monitoring strategy to target comprehensive inspections at PCB permitted disposal facilities and commercial storage facilities. These inspections are undertaken in addition to the compliance monitoring and enforcement actions required under TSCA for the thousands of firms who, in one way or another, process, distribute, use, or store PCBs.

The hazardous waste management program under Subtitle C of RCRA requires generators to manifest hazardous wastes. The agency will shortly propose a rule which will require PCB facilities to obtain identification numbers and use a shipping manifest tailored to PCB equipment, thus facilitating enforcement under TSCA.

As Dr. Moore indicated yesterday, this rule will improve our ability to target enforcement actions by improving our information on the identities and locations of commercial storers of PCB wastes.

You may be interested to know that most generators, transporters, storers, and disposers of PCBs are already using a manifest system. The use of a voluntary system apparently has arisen as handlers seek to limit liabilities and to maintain records of generators who may share in those liabilities should they occur. It may simply be a case where the responsible segment of the regulated community is acting to distinguish themselves from the bad actors.

Permitting mobile treatment units is an area in which the agency would lose flexibility if PCBs were transferred to RCRA. Mobile treatment technologies permitted under the PCB program are not required to have a separate permit for each facility at which they operate and, to date, have not encountered the type of public resistance that has sometimes occurred in the RCRA permitting program.

Some 2 billion pounds of PCBs were introduced into use beginning in 1929, and, since 1978 when the TSCA program went into effect, we have reduced this amount to approximately 310 million pounds which remain for disposal. Millions of sites use PCBs in products such as transformers, capacitors, and heat transfer equipment.

Our 1988 estimates indicate that we may expect PCB wastes to be generated at more than 350,000 transformers at levels above 500 parts per million. There are also an estimated 2 million PCB capacitors and 20 million contaminated mineral oil transformers with which we have to deal.

Required phase-outs of PCB uses in certain electrical equipment will bring a peak period of PCB disposal during the 1988 to 1990 time frame. This peak period will occur at a time when we are trying to administer the major portions of the HSWA amendments, including corrective action, the land disposal restrictions ban, and other major programs.

Just to summarize briefly, the issues have arisen during our discussions in EPA and between environmental and industry groups on tracking systems, prior approval for storage, and enforcement procedures. We have spent considerable time on these matters.

The Administrator charged us in a working group to evaluate the implications to the environment of any course of action we may choose. Participants in these discussions have reached a consensus that improved TSCA regulations were a preferred option and offered the environmental protection equivalent to that afforded hazardous wastes under RCRA.

At this time, if you would like, I would pause for any questions you may have.

Senator BAUCUS. Thank you. I will have questions when the other panel members have completed their statements.

Mr. Davis?

STATEMENT OF ARTHUR A. DAVIS, SECRETARY, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES, ACCOMPANIED BY DON BROWN, CHIEF OF LITIGATION

Mr. DAVIS. Thank you, Mr. Chairman.

I am Arthur Davis, Secretary of the Pennsylvania Department of Environmental Resources. I have with me Don Brown who is Chief of Litigation in our legal office.

Governor Casey truly regrets that he was not able to be here himself. He is most interested in this area, but he has asked me to represent him.

We are gratified that the United States Senate is considering expanding the regulation of polychlorinated biphenyls or PCBs. Our recent experience in the matter of Texas Eastern Gas Pipeline Company leads us to conclude that the current Federal approach to PCB cleanup is seriously flawed, for, despite a rapid, exhaustive, and effective response to address the environmental problems caused by the Texas Eastern Company's dumping of PCBs in the Commonwealth, we are in grave danger of having our efforts undercut by the U.S. Environmental Protection Agency.

I know that many members of the Senate Environment and Public Works Committee are acquainted with the facts of the Texas Eastern situation nationwide. I would like to provide some specific information on Pennsylvania's involvement and then share with you our conclusions on PCB regulation in the hope that they will be useful to you in developing legislation.

I am also submitting written testimony that is in far greater detail.

The Department of Environmental Resources and, indeed, the Commonwealth of Pennsylvania had to find out from the newspapers in February of 1987 that a Texas Eastern Gas Pipeline Company had disposed of pipeline liquids containing PCBs at sites across the Commonwealth and to find out also that they had been in negotiation with EPA for several years, unbeknownst to us.

Within days of learning about this situation, we issued an administrative order to Texas Eastern requiring an assessment of the problem in Pennsylvania and submission to us of all relevant information and documentation. On April 1, we executed a consent order and agreement with Texas Eastern that required site characterization at 18 of 19 Pennsylvania sites that considered both on- and off-site contamination of soil and water.

We required them to look for additional disposal areas at these sites to prevent further pollution and to submit cleanup plans. The cleanup plans were to be based on a soil cleanup standard for PCBs of 1 part per million.

Meanwhile, we understood that EPA was coming close to finalizing an agreement with Texas Eastern. On July 9, 1987, Governor Casey wrote to the Administrator of EPA informing him of our actions and stating that it would be unfortunate and inappropriate for EPA to take a position on cleanup levels without input from Pennsylvania. The letter asked for an opportunity to be a full participant in any negotiation before EPA takes any position on cleanup levels or methods.

EPA did not allow us to participate. Instead, it announced on November 8, 1987 that it had reached an agreement in principle with Texas Eastern. We were briefed on the agreement in late November though not permitted to see the document itself.

This past January, Texas Eastern agreed to pay DER's first year oversight costs up to $1 million. The parties also agreed to continue negotiations on issues other than those in our April order. The principal outstanding issues were the cleanup standards and schedules for remediation of surface soils, sediments, and groundwater, and the payment of civil penalties.

After two months, we concluded that Texas Eastern was not negotiating in good faith. Accordingly, on March 17, we issued an order requiring them to submit plans for the 22 new disposal areas that had been identified after April of 1987 and establishing a schedule for groundwater cleanup. We sought a total of $61.3 million in civil penalties under State solid waste and water quality laws, penalties we felt were commensurate with the seriousness of the environmental threat and the threat to public health and safety.

On the same day, Governor Casey again wrote to EPA outlining Pennsylvania's concerns with EPA's handling of the Texas Eastern situation.

Field assessments were showing soil contamination by PCBs and other substances such as benzine both on- and off-site in many of the disposal locations. They also revealed PCBs in adjacent streams and, most significantly, groundwater contamination at 13 sites.

Our worst fears about a separate agreement materialized. In a consent decree which we received notice of June 10, EPA agreed to PCB soil cleanup levels that we believe may not adequately protect public health and the environment. The decree also settles many issues and civil penalties under TSCA, Superfund, RCRA, and, most alarmingly, parallel State law. In our view, this consent decree is extraordinarily weak and poorly drawn.

For example, it does not address on-site cleanup levels for non-PCB contaminants, does not address off-site soil problems, stream sediment problems, or groundwater. Yet, in our view, groundwater cleanup may turn out to be the most costly and difficult component of the entire cleanup operation.

By settling claims under State law, EPA may have seriously jeopardized Pennsylvania's ability to require Texas Eastern to undertake an adequate and complete cleanup. We are deeply disturbed by the procedures EPA used in agreeing to the consent decree, by the content of the decree, and by its unlawful exercise of authority.

Accordingly, we have been forced to take three actions. First, this past Monday, we filed extensive comments against the decree with the Justice Department. Copies of them have been made available to you.

Second, Governor Casey has petitioned EPA to have all references to Pennsylvanian removed from the decree so that it is clear that it will have no effect on Pennsylvania's ability to have Texas Eastern fully comply with Pennsylvania law.

Third, we are filing suit against EPA by intervening in the Texas court, asking the court to declare that the decree has no effect in Pennsylvania or that the whole decree is unlawful and not in the public interest.

We have learned some hard lessons from this experience which we would like to share with you.

We believe that Federal law on the regulation of PCBs must provide an express role for the States. EPA should not negotiate a cleanup without allowing a State to participate. As you know, both RCRA and Superfund include a State role, but EPA chose to structure their response to Texas Eastern through TSCA which does not.

Although we may not be precluded from taking separate action, EPA's agreement to settle has given the company the opportunity to argue that our cleanup standards are greater than is necessary to protect the public health. We disagree, of course.

Senator BAUCUS. I am going to have to ask you to summarize, Mr. Davis.

Mr. DAVIS. Yes, sir.

Finally, we believe that legislation that requires PCBs to be subjected to the same standards as other hazardous wastes under RCRA is necessary and desirable, and we support it. It would assure greater consistency because of the law of hazardous waste as it continues to develop would automatically apply to PCBs. Greater consistency promotes understanding, and the greater the understanding, the better the protection.

Finally, sir, we are faced in the Nation now with a major challenge concerning our response to PCBs. It is going to take the best efforts of all of us. It seems to us in Pennsylvania that what we need here is generous understanding on the part of all of the enforcement agencies. We believe that such a spirit really must exist to be effective.

Therefore, we are particularly concerned at the situation that has developed between us and EPA. We respect EPA, we want to work with it, but we are disappointed and saddened at the course they have taken in this matter.

Thank you very much for this opportunity to present our views.

Senator BAUCUS. Thank you, Mr. Davis. I appreciate that.

Mr. Bowles?

STATEMENT OF ALVIN BOWLES, CHIEF, HAZARDOUS WASTE DIVISION, MARYLAND DEPARTMENT OF THE ENVIRONMENT, ACCOMPANIED BY MICHAEL POWELL, ACTING PRINCIPAL COUNSEL

Mr. BOWLES. Mr. Chairman, my name is Alvin Bowles. I am an engineer and Chief of the Hazardous Waste Division with the Hazardous and Solid Waste Management Division of the Maryland Department of the Environment.

Accompanying me today is Mr. Michael Powell who is the Acting Principal Counsel with the Department of the Environment, and he will be available for any legal questions you may have.

I am here this morning to testify in favor of making PCBs a listed hazardous waste. In Maryland, we already do what you are planning to do and what you want EPA to do, and we find it very doable.

Maryland considered PCBs as hazardous waste in 1980 and listed them in our regulations. They are listed in three categories: (1) an acute hazardous waste when the concentrations exceed 500 parts per million; (2) as a toxic hazardous waste when concentrations are between 50 and 500 parts per million; and (3) a mixed waste when concentrations greater than 50 parts per million are spilled on soil or mixed with other debris.

When PCBs are transported from a generator for disposal, they must be carried by a hauler certified in maryland as a hazardous waste hauler, and the driver of the vehicle must be certified to drive hazardous waste in the State. In addition, the waste must be shipped with a uniform hazardous waste manifest. We treat PCBs as we would any other hazardous waste listed under the Resource Conservation and Recovery Act.

In another area, that of treatment, storage, and disposal facilities, we require any facility that stores PCBs for more than 90 days to obtain a full hazardous waste permit. In this permit, we require financial assurance and contingency plans, among other types of things that are required in a permit such as safety considerations, training, site design, and these types of things.

Also, any facility that wishes to incinerate this material must also obtain, at a minimum, a limited facility permit. A limited facility permit is similar to a full RCRA permit but has some reduced requirements, particularly in the stack testing. Such a permit can apply not only to PCBs but to any hazardous waste being burned for energy recovery. Again, PCBs are treated as any other hazardous waste.

We have not experienced any problems regulating PCBs above and beyond that which we have experienced with any other hazardous waste. There are always specific questions that arise.

Business and industry in Maryland have accepted the designation of PCBs as hazardous waste and, with one exception, have not challenged it. With respect to that one challenge, it was settled in favor of the State.

This ends my prepared testimony. I would be glad to answer any questions that you may have, and I thank you for this opportunity to speak to you.

Senator **Baucus**. Thank you.

First, I would like to ask Mr. Bowles and Mr. Davis if you could specifically and succinctly state the heart of the reasons why you think that PCBs should be listed as a hazardous waste, that is, why you believe, in your capacity as public officials for your respective States, that the present statutory framework under TSCA is inadequate. Just what is the heart of the matter?

Mr. **Bowles**. We think that PCBs are as hazardous as other materials. They represent a direct threat to the environment and to the health of the people, and they are more hazardous than a number of other chemicals that are already listed under the RCRA program. So, we feel that is a proper place for them to be.

Senator **Baucus**. Mr. Davis?

Mr. **Davis**. Well, I would support that, and I would just add to that—and I don't mean to seem contentious here, but under the present arrangements, it is possible for industry to go to EPA and get one interpretation and one set of agreements and the State is powerless, not powerless, but we are faced with a very difficult situation in trying to remedy that. PCBs surely are extremely hazardous, and they belong under RCRA, and they should be treated that way.

Senator **Baucus**. Mr. Denit, why did EPA not consult with the State of Pennsylvania when EPA first learned from Texas Eastern of the problem with disposals of PCBs?

Mr. **Denit**. Excuse me, Mr. Chairman. Let me consult with Mr. Kimm on that, because I am not familiar specifically with the timing.

Senator **Baucus**. Sure.

Mr. **Kimm**. Mr. Chairman, I am Victor Kimm. I am the Deputy Assistant Administrator for Pesticides and Toxic Substances.

In terms of the lack of consultation, I don't have an answer at this point. We will have to submit that for the record.

It is handled through the enforcement process through a period of time, and I am not certain about what consultation did or did not take place.

Senator **Baucus**. Were either of you aware that Pennsylvania was not being consulted or informed? Were either of you aware that EPA and/or the relevant law enforcement officials were not informing Pennsylvania of the problem?

Mr. **Denit**. I had understood consultations were under way, but I am not specifically aware of the issue with respect to timing of formal notification of actions to be taken.

Senator **Baucus**. Would you for the record indicate the reason why EPA did not inform or consult with the State of Pennsylvania?

Mr. **Kimm**. Certainly, but more directly to your question, there is no reason or policy that would have prevented us from that conversation. I just don't know how those particular events took place, and we will go back with the enforcement folks and submit it for the record. (See p. 20.)

Senator **Baucus**. Did EPA intend to preempt State law? Did EPA intend to preempt the State or prevent the State from in any way enforcing State law?

Mr. **Denit**. No sir. As a matter of process, as a matter of fact, we were trying to inform all of the States as well as the Regions—there were six regional offices involved and some 14 or 15 States. My understanding of the process was that we notify all of those people on as timely a basis as we possibly could to invite their input to the process.

Senator **Baucus**. But you have heard from Mr. Davis that the State of Pennsylvania was not consulted.

Mr. **Davis**. With all respect, sir, my understanding is that even your regional office wasn't aware that you had entered into negotiations with the company and that Pennsylvania wasn't singled out. None of the States, to my understanding, had any understanding that negotiations were underway between EPA and Texas Eastern with respect to the pipeline situation.

Mr. **Denit**. I am not aware of that difficulty, Mr. Chairman. Again, we will have to clarify that and get back to you.

[EPA supplied the following information:]

ENCLOSURE

STATE ABILITY FOR INDEPENDENT ENFORCEMENT ACTION

At the hearing, certain Subcommittee members and personnel of the State of Pennsylvania Department of Environmental Resources expressed concern about the effect of the recently lodged federal Consent Decree on the ability of the State to maintain independent enforcement action against Texas Eastern to address contamination at sites in Pennsylvania. In response to this, we assure you that the Agency was concerned about the State's ability to take action; the Department of Justice and EPA's Office of Enforcement and Compliance Monitoring carefully negotiated the agreement to protect the ability of states to initiate action under their laws or appropriate delegated programs. Therefore, during the period of negotiation and before entering into this agreement, the United States had researched the potential ramifications of the filed complaint and Consent Decree on the ability of states to initiate independent enforcement actions against Texas Eastern under state law and delegated federal authority. In our view, a state, as a separate sovereign, would not be precluded from maintaining an independent enforcement action against Texas Eastern. Therefore, we believe that the filing of the civil action against Texas Eastern and the entry of the lodged Consent Decree will not, as a matter of law, preclude a state from initiating an action, under state law or delegated federal authority, to address contamination at Texas Eastern sites.

The Consent Decree, a copy of which is enclosed,* addresses this issue in a number of separate provisions specifically included at the demand of the United States to guarantee state enforcement authority. First, the Consent Decree states that "...the parties [i.e. Texas Eastern and the United States] recognize that the states are not parties to this Consent Decree and have such rights as may be available under applicable law ..."(Consent Decree, page 3). The Consent Decree further establishes that "...nothing in this Consent Decree shall excuse Texas Eastern from complying with the requirements of all applicable federal, state or local laws and regulations..." (Consent Decree, page 82, emphasis added). In addition, the procedures established in the Consent Decree for implementation of remedial activities specifically evidence the intent of the United States and Texas Eastern to provide for future

*The Consent Decree referred to has been retained in committee files.

enforcement actions by state authorities. The Consent Decree provides for the incorporation of additional characterization and remediation activities required of Texas Eastern through future enforcement action by state authorities (Consent Decree, page 90). In addition, should enforcement action be taken by a state, the Consent Decree allows for the completion of state legal action or negotiation with Texas Eastern before the implementation of conflicting Consent Decree provisions (Consent Decree, page 90). Finally, to assist the states in their decisions on whether independent state action is appropriate, the Consent Decree requires that Texas Eastern submit to the states all data, reports, and workplans regarding activities pursuant to the Consent Decree simultaneously with submission to the United States (Consent Decree, page 21).

EPA - STATE AGENCY COMMUNICATIONS

Another issue which arose during the testimony of Mr. Arthur Davis before your Subcommittee was the matter of the Agency's contacts with staff of the Pennsylvania Department of Environmental Resources. In response, allow us to summarize the history of communications between EPA and State Agency authorities. We believe that EPA pursued the environmental problem posed by the Texas Eastern sites and communicated with State authorities in good faith, and that the Agency made a series of prudent decisions based upon the information available to it at the time.

Chronology

In order to provide you with background to this entire matter, we think it would be helpful to go through a chronology of EPA's involvement with Texas Eastern.

1981: PCBs were first discovered to be in a natural gas pipeline in January 1981, by the Long Island Lighting Company of New York while the Company was investigating a clogged gas meter. In response to this situation, EPA, in coordination with state agencies and natural gas pipeline companies, initiated a national program to determine the scope and extent of possible PCB contamination in gas pipelines. In general, under this program, EPA headquarters worked with interstate gas transmission companies, and EPA regional offices and interested states worked with local utilities. The program involved the collection and analysis of thousands of pipeline condensate samples and hundreds of compressor lubrication oil samples.

1985: In August 1985, during a meeting initiated by Texas Eastern to discuss the company's pipeline condensate remedial program, the Agency was advised that Texas Eastern had used earthen pits for waste disposal.

1986: On December 16, 1986, EPA received a Preliminary Report of Sampling Program at Texas Eastern Compressor Stations, the first comprehensive analysis of PCB contamination of Texas Eastern sites. The report indicated that contaminated disposal pits existed at 68 compressor station sites along the company's interstate pipeline system. Initial assessment of the submitted preliminary data by EPA personnel concluded that further sampling to fully characterize the sites and final cleanup actions regarding the disposal sites must be undertaken.

EPA initiated a coordinated effort to notify the affected states of our information regarding Texas Eastern sites in late 1986.

1987: On February 19, 1987, the Office of Waste Programs Enforcement formally requested the regional Division Directors in charge of state notification under RCRA to contact the appropriate state authorities. Informal staff contacts with state officials through routine communication channels had begun in previous weeks. On February 20, 1987, the Regional Administrators of Regions II - VII were formally requested by the EPA Office of Enforcement and Compliance Monitoring to ensure that formal notification of affected states was concluded by March 2.

Following the notification of state authorities of the presence of PCBs at Texas Eastern sites, a massive effort was undertaken, in coordination with state authorities, to investigate each site to determine the need for immediate action to protect human health and the environment. A number of these preliminary assessments were actually performed by state personnel. The State of Pennsylvania took the lead in conducting the preliminary assessments at sites in Pennsylvania.

Where EPA personnel performed site investigations, confirmed results were expeditiously forwarded to state authorities. Throughout the investigations and negotiations with Texas Eastern, the Agency has made every effort to expeditiously inform state authorities of information obtained regarding site conditions. Site specific information was forwarded to state personnel through routine telephone communications by EPA regional staff and two formal transmittals from the Deputy Administrator and the Office of Waste Programs Enforcement in February and July 1987. In addition, state personnel in states, such as Pennsylvania, which had initiated legal action or which were engaged in negotiations with Texas Eastern were kept apprised of the status of negotiations by members of the federal negotiation team. Due to the United States' desire to preclude any inference of collaboration with state authorities which might jeopardize the ability of a state to initiate enforcement actions against Texas Eastern, the federal negotiation team did not communicate with state personnel regarding the formation of federal negotiation positions.

1987-
1988: Formal briefings of state personnel were held in November 1987 and July 1988 to explain the status and result of federal settlement negotiations. At these briefings, state personnel were provided with a full explanation of federal negotiating positions, the rationale which supported the selection of the required remedial activities and cleanup levels, and the protections afforded by the Consent Decree to preserve the ability of the states to take future enforcement actions. The views of state personnel were fully discussed and taken into consideration by the Agency.

In addition to EPA-initiated communications with state authorities, EPA responded to numerous requests for information from state authorities, Congressional members, and citizens during 1987 and 1988.

PCBs AS INDICATORS OF CONTAMINATION

Another issue raised during testimony before your Subcommittee at the recent hearing concerned the Agency's reliance on PCBs as an indicator chemical of site contamination in its negotiations with Texas Eastern. The Agency conducted the prefiling settlement negotiation primarily under the authority of the Toxic Substances Control Act (TSCA), the statute regulating PCBs. The decision to proceed pursuant to the authority of TSCA was made because PCBs are the primary contaminant of concern at the Texas Eastern sites and the clean-up of the PCBs in soils will also result in the clean-up of other associated pipeline wastes. Further, this approach fosters efficiency and national consistency by subjecting implementation of remedial activities in 14 states to the jurisdiction of one federal judicial district.

Senator BAUCUS. Again, was it the intent of EPA to preempt State law enforcement with this consent decree that was reached between EPA and Texas Eastern?

Mr. DENIT. I certainly don't think so. Mr. Kimm may want to inquire of Mr. Walker of our Office of Enforcement and Compliance Monitoring to check on that.

Mr. KIMM. It was certainly not our intent to preempt. Again, we will address this more fully. You have the wrong people here at the moment, but we will address this more fully for the record.

Senator BAUCUS. Do you agree that that was the effect of the consent decree?

Mr. KIMM. Well, the consent decree is in process. That is, at this point, it has been lodged with the court, comments have been received, and the Justice Department will have to respond to the court, addressing all of the comments received, including those of the State of Pennsylvania.

Senator BAUCUS. Are there any other EPA personnel here who have the information to answer some of these questions? Are there any EPA law enforcement personnel in the hearing room?

Mr. DENIT. Mr. Walker from the Office of Enforcement is here.

Mr. WALKER. Thank you, Mr. Chairman.

I am Michael J. Walker, and I am the Assistant Enforcement Counsel for Toxic Substances within the Office of Enforcement.

There is no intent on the part of the agency to exclude any State from taking any action that they want independent of the Federal settlement.

Senator BAUCUS. You heard that it is the view of the State of Pennsylvania that that is certainly the effect of the consent decree. In fact, the State of Pennsylvania apparently is petitioning the relevant courts to attempt to limit that part of the decree so that the State of Pennsylvania may proceed on its own under its own regulatory framework.

Mr. WALKER. Well, we have received those comments which are quite extensive. The Department of Justice, on behalf of EPA, is evaluating those concerns, and we expect to answer each and every one of them fully.

Senator BAUCUS. Will EPA resist those petitions and those requests by the State of Pennsylvania or will EPA tell the judge that Pennsylvania should be able to continue on its own entirely and separately, independently of the effect of the decree as it affects Federal law enforcement?

Mr. WALKER. I don't believe I can answer that question at this time. We really have to evaluate these concerns, and if the net effect is that the settlement would be rejected by the company and the cleanup couldn't begin, I think we would have some very serious concerns about that.

Senator BAUCUS. Mr. Davis?

Mr. DAVIS. Mr. Chairman, I don't want to prolong this, but I think there is a very important point that needs to be made here. This is not simply a matter of State versus Federal jurisdiction and interests, although that is an important point. We are talking here about reaching judgments on cleanup levels affecting public health and safety all over the country, and they are very different.

In our 19 sites, there are at least 15 different situations that exist and need to be looked at differently, treated differently. We need to reach decisions on somewhat different points.

We have put together a great deal of information, and we would be most pleased to share and I believe we are sharing with EPA now. None of that is being taken into account at all. In reaching the agreement in principle and then the final decree, EPA ignored all of this information and the opportunity to work collegially with the State in reaching decisions that are going to be best for the public health and safety and the environment.

That seems to be very unfortunate.

Senator BAUCUS. What about that, Mr. Denit? Mr. Davis is saying it is not a Federal-State competition. Rather, it is a major effort on the part of the State of Pennsylvania to cooperate and work with EPA and, certainly, to demonstrate that intent, Pennsylvania has filed many suggestions, information to EPA. Yet, in the opinion of the State of Pennsylvania, they have been ignored.

Mr. DENIT. Again, Mr. Chairman, I am not aware of the allegation of having been ignored. I think the agency was certainly acting in the interest of trying to expedite cleanup of a massive problem.

Senator BAUCUS. Are you personally aware of these efforts of the State of Pennsylvania to supply this information?

Mr. DENIT. No, sir, I am not personally aware of that.

Senator BAUCUS. Can you tell me who within your agency might be? Is there anyone within this room who is aware of that?

Mr. DENIT. Mr. Walker may be.

Senator BAUCUS. Mr. Walker, were you aware?

Mr. DENIT. The detailed negotiations were handled in combination by the Office of Waste Programs Enforcement as well as Mr. Walker's office.

Senator BAUCUS. Mr. Walker?

Mr. WALKER. I have been advised that there are 14 different States involved in this settlement and that States have been consulted and that many concerns that have been raised by the States during the settlement process have been incorporated into the settlement. Now, I can't tell you that each and every concern raised by the State of Pennsylvania has been addressed, but I can tell you that we do want to look at the extensive comments that the State of Pennsylvania has submitted to the court and to the Department of Justice in response to this proposed settlement.

Senator BAUCUS. Mr. Denit, do you think States have the authority under RCRA to regulate PCBs currently?

Mr. DENIT. Yes. The general framework with respect to RCRA, as you know, Mr. Chairman, is that where States choose to be more stringent than the RCRA requirements, for example, with respect to listing wastes, they can do so. Some 18 States have opted in that regard already.

Senator BAUCUS. My more precise question is, despite the current Federal regulation under TSCA, is it EPA's opinion that States also have the authority under RCRA to regulate PCBs more strictly than the TSCA standards?

Mr. DENIT. Yes, sir, that would be the case.

Senator BAUCUS. Including the State of Pennsylvania?

Mr. DENIT. Any State which is authorized or wishes to do so can be more stringent and list and deal with PCBs under RCRA authority.

Senator BAUCUS. Why might not EPA have consulted earlier, therefore, with the State of Pennsylvania?

Mr. DENIT. Again, Mr. Chairman, I personally just do not know the answer to that question. It is information we simply have to get back to the committee on.

Senator BAUCUS. I don't mean to be difficult, but since that goes to the heart of the matter that is pending before this committee, that is, the degree to which any legislation, certainly the bill that is before this committee, should provide that PCBs are toxic substances and, therefore, regulated under RCRA. To the degree that that is the main point of the bill here, don't you think that you should know the answers to some of these questions so that you can better inform this committee and give EPA's position with respect to some of these?

Mr. DENIT. Well, perhaps I need to try to clarify. My understanding of what you are asking me is in the specific case, for example, of Pennsylvania was the State consulted in this particular case, and that I just simply am not privy to that information personally.

More importantly, in the broader context of RCRA, if a State had chosen to do so, that is, regulate PCBs under the State RCRA or RCRA-like authority, would the agency have normally consulted with such authorized State, and the answer to that is, as a general matter, very definitely. However, again, in terms of the specifics with Pennsylvania, I am just not personally aware.

Senator CHAFEE. Mr. Chairman, could I interrupt here?

Senator BAUCUS. Certainly.

Senator CHAFEE. Unfortunately, I have a conflict, but I do want to commend you for holding these hearings and for pursuing this matter.

Senator BAUCUS. Take all the time you want, Senator.

Senator CHAFEE. Unfortunately, I just have to go to another committee meeting, but I want to congratulate you for what you are doing, and we are going to keep abreast of it.

Senator BAUCUS. Thank you.

Mr. Denit, do you think that PCBs are any more toxic or less toxic than other hazardous wastes?

Mr. DENIT. In a general sense, Mr. Chairman, PCBs are among many of what are otherwise hazardous constituents or wastes with which we have dealt. That would not allow one to necessarily differentiate on the basis of health or environmental impacts. They are severe for PCBs as well as for many other solvents and other waste type products with which we explicitly deal under RCRA.

Senator BAUCUS. So, they are as hazardous.

Mr. DENIT. At least.

Senator BAUCUS. Then why not, under RCRA, regulate as other hazardous toxic wastes?

Mr. DENIT. Again, to go back just to a little bit more elaborate discussion on coming off of my testimony, the Administrator had made it extremely clear as a consequence of his presentations before Congress at the time of the 1984 amendments that he had then the authority to go ahead and list PCBs under RCRA and would do so. He charged the Office of Solid Waste with an analysis involving public groups, industry, and others to make an assessment of the way to do that.

As that process began to unfold, it became increasingly clear that the disruptive effects on the way the TSCA program was now going in terms of timely disposal using mobile units and the otherwise potential disruptive effects to the administration of the RCRA program absent mobile treatment unit requirements and given corrective action and land ban rules and so forth that, on balance, the environment would be far better served if we left the program under TSCA and chose the course of action of bringing facility identification, storage requirements, and financial responsibility under the TSCA framework rather than RCRA.

Ultimately, the Administrator concurred in the recommendations of the larger group and the analysis. However, I want to be sure that the committee understands that throughout all of this, our continual interests were in trying to be sure that the most timely process would be put into place to clean up PCBs as rapidly as we could, and this was our conclusion in that respect.

Senator BAUCUS. By what date will all those regulations be effective?

Mr. DENIT. Well, the consequence of the land ban, as you perhaps are aware, is that we just promulgated the first thirds on Monday. The second and third thirds will take us through the period of 1990, absent any extensions for capacity issues.

That means those regulatory requirements will be in place by some time in the calendar year 1990. We still have then permitting, requirements for storage facilities which will carry the agency and some 3,000 to 4,000 facilities into 1992, and we have incinerator and furnace regulations coming along including permitting requirements for incinerators in 1989. Commercial boilers and furnaces will take us into the 1991–1992 timeframe.

Senator BAUCUS. Mr. Davis, by what date are your RCRA regulations of PCBs effective in the State of Pennsylvania?

Mr. BROWN. We currently don't have PCBs listed as a RCRA waste, but we did get Texas Eastern to admit that it is ignitable. So, we can regulate Texas Eastern under our own regulations. It is not a problem for us.

Senator BAUCUS. Would you please identify yourself for the record?

Mr. BROWN. Yes. My name is Donald Brown. I am with the Chief Counsel's office in the Department of Environmental Resources.

Senator BAUCUS. So, as a practical matter, Pennsylvania can regulate PCBs currently.

Mr. BROWN. Yes.

Senator BAUCUS. Two more questions for Mr. Davis and Mr. Bowles. I expect that the utilities will somewhat make the same points that Mr. Denit has made insofar as that listing PCBs will be disruptive and cause red tape and confusion, et cetera, and, second, PCBs are no longer produced, so why should we move to a different framework instead of working with the present TSCA framework.

Could I ask both of you to respond to those two points which I anticipate we are going to hear? This is your chance to address these points.

Mr. DAVIS. As I understand your question, Mr. Chairman, why should we be acting now? Is that it?

Senator BAUCUS. That is basically the point. My point is that I suspect that witnesses later on are going to say that it is too disruptive and there will be too much paperwork and red tape and so forth.

Mr. DAVIS. Yes. Well, we understand that position. We respectfully disagree with it. We really think that Representative Florio hit the nail right on the head.

You could handle the situation under TSCA with an amendment, but RCRA is the home, so to speak, of the hazardous waste program and the hazardous waste regulations. PCBs are hazardous materials. The case law is now handled largely under RCRA. We just think that it has all kinds of advantages to put it where it naturally seems to us to belong.

The fact that it is no longer and produced and so forth and some of the other allegations really have very little to do with the need to deal with the problem that faces us which is cleaning up hundreds of millions of pounds of this material.

So, for these reasons, we believe it should be listed under RCRA and handled in that way.

Senator BAUCUS. Thank you.

Mr. POWELL. If I can, Senator, I am Michael Powell, the Principal Counsel for the Department of Environment. I would like to respond for Mr. Bowles to this question, because we faced the issue in court with industries that have been concerned about the redtape.

Quite frankly, it works. It works in Maryland. We have worked with utilities there, including the Baltimore Gas and Electric Company, PEPCO, and various other utilities. They are complying with our scheme and are doing so on a day to day basis.

So, I guess I have to answer you that while there may be objections to this process, we know that it is doable.

I would like to take this opportunity to clarify one thing that I have heard you ask several times during this hearing, and that is, is it clear that States can regulate this under RCRA? EPA and the 18 States that regulate it take the position that they can, but you should know that the courts have not been unanimous.

The concern has been that a number of courts, the Eastern District of South Carolina, the Southern District of Ohio, the Fifth Circuit Court of Appeals have held that the States cannot regulate PCBs under their RCRA programs. Because of that, there is concern among the States and a feeling among the States that your amendment to the statute is needed.

I can add to that that it is obvious that the reason industry is in here opposing your amendment is because they want to preserve the objection to the State programs.

Senator BAUCUS. Well, certainly, the amendment would make it more clear.

Mr. POWELL. That is right.

Senator BAUCUS. I have no further questions. Do any of you have anything to say that is under your skin? Did somebody say something outrageous that any of you want to address?

Mr. DENIT. No, sir. Thank you, Mr. Chairman.

Senator **Baucus**. Thank you all very much. Thank you for taking the time for coming to testify.

Mr. **Davis**. Thank you, Mr. Chairman.

Senator **Baucus**. The final panel consists of Mr. Richard Fortuna of the Hazardous Waste Treatment Council, Mr. Steven Rosenthal of the National Electrical Manufacturers Association, Mr. Thomas Seidoff of the Union Electric Company, and Dr. John Craddock with the Monsanto Corporation.

Again, I thank all of you for coming. You are very busy people. You have busy schedules, and the committee appreciates the time you are taking to come give your views before this committee.

I would also remind each witness of the five-minute time limitation.

Mr. **Rosenthal**. Mr. Chairman, I think we have all agreed on an order so that we can go ahead.

Senator **Baucus**. Fine. This committee encourages agreement.

STATEMENT OF RICHARD C. FORTUNA, EXECUTIVE DIRECTOR, HAZARDOUS WASTE TREATMENT COUNCIL

Mr. **Fortuna**. Mr. Chairman, my name is Richard Fortuna. I am executive director of the Hazardous Waste Treatment Council.

We represent firms with the full spectrum of PCB treatment and disposal capability, mobile and fixed, chemical and thermal. We pride ourselves on supporting laws and regulations that provide for the proper and stringent management of hazardous waste, including PCBs, and we are very pleased that the committee has taken this action of draft legislation to parallel the House bill to serve as a means to fill many of the serious gaps in the PCB regulations.

I think the history of the PCB problem, as we see it, is but a repetition of the same church, different pew that we have seen in other areas of hazardous waste like the committee hearing not too long ago on sham recycling. Whenever you have an absence of regulation control, that is where you are going to find the sham operators flocking to make a quick buck.

That is clearly the problem we have had here with PCBs. We simply cannot continue a situation where we have PCB storage, treatment, and disposal occurring without first having proper permits, financial responsibility, and notification provided.

We support the legislation that you have drafted and put together in many key respects. We think it targets the most serious deficiencies, notification, ID number, tracking and manifesting, prior permitting of storage facilities, and also financial responsibility, closure, and contingency plans. We support the need for a review of permits periodically and the need for mandatory inspection of facilities. We also appreciate the recognition of the fact that many facilities out there are legitimate, have received prior approval, and should be grandfathered.

We also support two other, I think, unique and interesting elements of the bill that are not reflected in the House legislation which is imposing RCRA standards as a backup, if you will, in the event that EPA fails to move forward. We also support the requirement that EPA provide yearly notice of enforcement actions.

This is to keep public tab on what is happening or what is not happening in PCB enforcement. We think this is also a very necessary component of any future RCRA legislation so as to have a public reminder, if you will, of our enforcement status.

I would also like to note, Mr. Chairman, that all with TSCA is not bad. TSCA does have a more stringent destruction standard for incineration and, frankly, it is and has been one of the most successful waste treatment programs this country has ever seen.

All the problems with PCBs are not of the ilk of Texas Eastern. There are thousands and thousands of PCB transformers that have been decontaminated in a very cost effective, efficient manner through the use of mobile chemical detoxification equipment. This equipment frequently goes to sites, stays there for maybe two days to a week, decontaminates the PCB transformer while keeping the equipment on line and not having to shut down the utility.

This is made possible only by TSCA's unique permitting mechanism, a mechanism that allows national permits to be issued to equipment, not to specific facilities.

This is a mechanism that simply is not possible under RCRA right now, because every time a mobile unit were to move to a new facility, it would have to start anew and begin the entire permit process anew for a treatment operation that frequently takes less than a week, and the permit process under RCRA, even under the most optimistic scenario, will take at least a year. This is simply not a situation that is amenable to dealing with the problem.

With regard to the States, we do not object to the fact that many States have listed PCBs under their State laws as hazardous waste. To the extent we need explicit authority for States to adopt or take charge of the enforcement authorities, so be it.

However, a simple and wholesale transfer of PCBs under RCRA right now, Mr. Chairman, really only gives the appearance of a solution but in many ways causes more problems than it solves. It will vitiate the very permit process that makes cleanup of PCBs possible. We are essentially going to be in a situation of being all dressed up and nowhere to go.

Stringency and standards alone don't do the whole job. We need a mechanism to get the equipment out there to clean up these transformers, to take them off line, particularly in the next two years when the vast majority of them are going to be coming off line.

If every time one of these mobile units has to get a separate permit and go through a RCRA type permit process, you are essentially going to be throwing the baby out with the bath water.

In conclusion, Mr. Chairman, I would just note that what you have drafted here, I think, is a very good bill. It is a very responsible piece of legislation that targets the most important and serious gaps in the TSCA system. It has many new and creative elements that we think are a fine complement for the House legislation.

However, I guess, Mr. Chairman, I must say that I feel a little bit like Mrs. Lincoln when she was asked, "but for that, how did you like the play?" Simply transferring PCBs over to RCRA and not dealing with the inherent permitting problems that the RCRA system has had or are endemic to the RCRA system is going to cause us more problems than it is going to solve.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you.

Who is next?

Mr. CRADDOCK. I am, Mr. Chairman.

STATEMENT OF JOHN CRADDOCK, CHAIRMAN, PCB PANEL, CHEMICAL MANUFACTURERS' ASSOCIATION

Mr. CRADDOCK. My name is John Craddock, and I am Chairman of the Chemical Manufacturers' Association program panel on PCBs. I am testifying today on behalf of the Chemical Manufacturers' Association.

CMA is a nonprofit trade association whose member companies represent about 90 percent of the Nation's productive capacity for basic industrial chemicals. CMA's interest in PCBs, because they are a chemical that has not been manufactured since 1977, is primarily that they are involved in the transmission of power to keep our industries running.

As a member of the PCB Consensus Group, the CMA PCB panel has worked closely with EPA for a decade to develop sound regulations under TSCA for activities involving PCBs. This Consensus Group, whose members also include representatives of the Environmental Defense Fund, the Natural Resources Defense Council, the National Electrical Manufacturers' Association, the Utilities Solid Waste Activities Group, many of whom are represented here today, has worked diligently to ensure that the TSCA PCB regulations do provide a sound framework through which the 1976 congressional goal of controlled use and disposal of PCBs is realized.

Along with other members of an expanded PCB Coalition that includes the environmental groups, USWAG, NEMA, the Association of American Railroads, and the Hazardous Waste Treatment Council we have, over the past two years, been addressing a variety of PCB disposal issues. In August 1987, the PCB Coalition proposed to EPA specific regulatory language to strengthen the TSCA disposal rules in the areas of manifesting, intermediate activity, and storage permitting and financial responsibility, the same substantive areas that are addressed in S. 2693.

We have submitted for the record documents which outline the history of our involvement with this issue.

We are here today to support sections 1 and 2 of this bill which parallel H.R. 3070 that has already been passed by the House. We oppose, however, sections 3 and 4 of the Senate bill which would apparently require EPA to shift regulation of PCB disposal to RCRA.

Our work on this issue has convinced us that the TSCA regulatory framework, combined with the improvements in H.R. 3070 and sections 1 and 2 of S. 2693, will adequately address these issues.

Because a sound framework is established in the existing PCB TSCA disposal rules, we believe the vast majority of all PCB-containing wastes in this country are currently being handled responsibly and safely. The rules have been in effect for nearly a decade and have become well understood by the regulated community.

Compliance with the rules is the norm. The stability of the rules has encouraged investment in technologies that encourage and accelerate safe disposal.

Although there have been incidents of improper PCB disposal, some of which are well publicized, we do not believe the cause of such incidents was an inadequate regulatory framework. In each of those instances, existing rules were being violated, EPA was aware of the violations, and the fault, if fault is to be found, is that enforcement was not swift and comprehensive.

We agree with the concerns expressed by the sponsors of S. 2693 that some changes in the TSCA PCB disposal rules would be appropriate to ensure that sound management practices currently used for most PCB disposal activities are followed universally and enforcement can be more swift.

The proposal of the PCB Coalition to EPA to amend the TSCA PCB rule in August of 1987 is reflected in all three of the specific substantive issues addressed in sections 1 and 2 of your bill.

First, manifesting of PCB wastes between generators and disposal would be required. Most PCB disposal is currently manifested, often on a voluntary basis. A requirement to that effect seems reasonable to ensure that all wastes are tracked.

Second, permitting of intermediate activities would be required. Permits are now required under TSCA for persons involved in treatment or disposal of PCBs. Extending such requirements to others involved in the disposal system, particularly those who store other persons' wastes on their way to disposal, seems appropriate.

Third, financial responsibility would be required in any TSCA PCB treatment, intermediate activity, or disposal permit. EPA has been imposing such requirements in permits for PCB disposal activities. Ensuring that such requirements are uniformly imposed also seems appropriate.

In proposing amendments to the TSCA disposal rules, the PCB Coalition recognized that there were a number of detailed questions needing resolution in order to ensure meaningful regulations. For example, there is a need to determine at what point in the disposal chain the manifesting requirements begin, exactly which activities should be permitted, and what types of financial responsibility requirements make sense for each activity.

EPA, too, recognized the need to look closely at these and other issues in its September, 1987 response to the PCB Coalition. In August of 1987, we encouraged the agency to work expeditiously to adopt such changes under TSCA. We welcome the agency's Federal Register announcement that such rulemakings will soon be issued. We believe that since EPA is already working on these issues, EPA can meet the deadlines in sections 1 and 2 of your bill.

We further believe it is important that changes in PCB rules be implemented through TSCA rather than through transferring PCB disposal regulation to RCRA as sections 3 and 4 of your bill contemplate. Sections 3 and 4 do far more than give States authority to enforce PCB regulations as written. It appears that sections 3 and 4 would make PCBs a hazardous waste and subject PCBs to the panoply of RCRA management requirements.

As EPA found when it was reviewing the possibility of moving PCB disposal to RCRA, the TSCA framework was specifically adopted to handle the unique features of PCB disposal. Much would be lost if the current workable framework were eliminated.

PCBs, unlike other materials currently regulated under RCRA, are unique in that their manufacture has been banned. The basic issue to be addressed for PCBs is thus not how to manage a stream of continuously generated hazardous waste but, rather, how to expedite the final disposal of a chemical no longer commercially produced. Since the amount of PCBs to be disposed of is continually declining, new or modified controls on PCB disposal should be structured to expedite disposal in an environmentally sound manner rather than impede it.

To summarize, Mr. Chairman, because I see the red light is on, I just would like to say that CMA urges the subcommittee to approve sections 1 and 2 of your bill but to delete sections 3 and 4. CMA believes that any important deficiencies in the regulation of PCB wastes can be remedied more expeditiously within the existing TSCA framework with the addition of language contained in sections 1 and 2 of your bill.

Continued attempts to shift the PCB disposal businesses of this country into an entirely different regulatory system are destined to cause confusion. This will slow the country's progress toward complete and safe elimination of PCB risk.

Thank you, again, Mr. Chairman, for the opportunity to be here, and we will submit the complete copy of our comments for the record.

Senator BAUCUS. Thank you.

Mr. Rosenthal, are you next?

Mr. ROSENTHAL. Yes, Mr. Chairman.

STATEMENT OF STEVEN ROSENTHAL, NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION

Mr. ROSENTHAL. Good morning, Mr. Chairman. My name is Steve Rosenthal, and I am testifying today on behalf of the National Electrical Manufacturers Association.

I am going to summarize my written comments. I would hope that our full comments could be included in the record.

Senator BAUCUS. That applies to all witnesses. Your complete prepared statements will be included in the hearing record.

Mr. ROSENTHAL. Thank you.

NEMA is the principal national trade association of the electrical manufacturing industry, representing approximately 560 member companies. NEMA members formerly manufactured PCB transformers and capacitors and continue to service PCB and PCB-contaminated transformers in their service shops. NEMA members, along with companies in other industries, continue to own and use PCB and PCB-contaminated transformers in their manufacturing operations, and we appreciate the opportunity to appear this morning to present our views on S. 2693.

I might add that I personally have been involved in the public comment on every PCB rule since 1976 and, therefore, have some familiarity with the existing PCB rulemaking structure that EPA has adopted over the past 12 years.

NEMA supports section 2 of S. 2693 which is adopted from H.R. 3070 already passed by the House. We, however, oppose section 3 which appears to shift regulation of PCBs from TSCA to RCRA.

We believe that the few regrettable instances of improper handling of PCBs, including particularly the Texas Eastern incident, have largely been the result of inadequate enforcement of the existing rules, not in structural flaws in the TSCA rules themselves. We therefore empathize with your desire to tighten the reins of enforcement.

We strongly disagree, however, that transferring and reshaping of the PCB regulations in order to meet the RCRA standards will accomplish the goal of improving enforcement. To the contrary, our view is that changing regulatory horses in the middle of the stream, especially during this peak period of disposal, would have disastrous effects not only on the disposal effort but also on the PCB enforcement efforts of EPA.

Despite criticism that it has been slow to identify facilities actually using PCBs, EPA enforcement of TSCA has been vigorous and is improving, especially over the past year or year and a half. EPA has been inspecting, as Mr. Denit indicated, close to 2,400 facilities each year for compliance with PCB regulations under TSCA.

I might point out that if we transfer this program to the RCRA program, PCBs become just one of a large number of other chemicals which EPA has to regulate with an enforcement staff that has to deal with a lot of other issues besides PCBs.

During fiscal year 1987, the EPA regional offices surpassed their targets in terms of TSCA inspections and brought 445 civil administrative complaints against PCB violators. They also levied fines in excess of $1.18 million. We have seen that in the first three months of 1988, 99 complaints have been brought by EPA for PCB violations.

NEMA is not here, Senator, to defend EPA's enforcement record. If Congress feels that additional resources are needed to augment EPA's enforcement of the existing TSCA regulations, NEMA pledges itself to assist the Congress in providing EPA with whatever tools or money it may need to administer and enforce the TSCA regulations. However, fundamental changes to the regulations themselves are not necessary and, we believe, will ultimately reduce, especially during this next critical period, the level of compliance and effective enforcement of PCB regulations.

We also have reason for concern as to whether RCRA enforcement is really the best alternative to TSCA enforcement. We have noted that an April GAO report stated that there has been a reluctance on the part of EPA to enforce RCRA regulations directly because States have primary enforcement responsibility, and there has been a desire by EPA not to damage their working relations with the States. Therefore, a splitting of authority between States and the Federal Government does not necessarily lead to increased enforcement of the regulations by both entities. Sometimes, it leads to EPA not enforcing the regulations and relying upon the States.

The goal of the EPA and the goal, I believe, of the Congress should be to increase compliance with these regulations. Maximum compliance, in our view, can be achieved by retaining the existing regulatory structure. Optimal enforcement can be reached most easily by targeting revisions within the framework of TSCA. H.R. 3070 does that, and we urge the committee, therefore, to approve section 2 of S. 2693.

We add that we would support providing necessary funds and tools to EPA to improve their TSCA enforcement, but we strongly urge this committee not to abandon TSCA regulations and not to transfer at this point the entire PCB disposal and regulatory structure to RCRA.

Thank you.

Senator BAUCUS. Thank you very much.

I assume that our final witness is Mr. Seidoff. Mr. Seidoff, why don't you go ahead.

STATEMENT OF THOMAS SIEDHOFF, MANAGER, ENVIRONMENTAL SERVICES, UNION ELECTRIC COMPANY

Mr. SIEDHOFF. Thank you, Mr. Chairman.

My name is Tom Siedhoff. I am manager of environmental services for the Union Electric Company in St. Louis, Missouri.

I have been active on PCB matters within the utility industry for over 10 years, and I am appearing this morning on behalf of the Edison Electric Institute, the National Rural Electric Cooperative Association, and the American Public Power Association.

I appreciate the opportunity to address the committee on this very important matter.

The utility industry supports section 2 of S. 2693, introduced last Friday by you, Mr. Chairman. These provisions parallel H.R. 3070 which passed the House in June.

However, we strongly oppose the remainder of the bill which transfers all authority over PCB waste management from TSCA to RCRA. Such a step is not only environmentally and legally unnecessary, as you have heard from the other witnesses, but could actually be environmentally counterproductive.

The explicit regulation of PCBs began at the Federal level with the passage of section 6(e) of TSCA in 1976. The first regulations implementing that provision were adopted by EPA nearly 10 years ago. Since that time, there has been a long series of major rulemakings affecting the use, manufacture, and distribution in commerce of PCB's.

As you have heard, more recently, a consensus group composed of industry and environmental groups has worked closely with each other and with EPA in an attempt to develop reasonable and workable PCB corrective action requirements that would be protective of human health and the environment.

The result of these efforts over the past decade is that a comprehensive regulatory program for the marking, use, storage, cleanup, and disposal of PCBs is in place. The program is well understood by the regulated community and, overall, it is working very well.

To be sure, dramatic yet relatively isolated incidents have occurred over the past few years that have prompted further discussions both in Congress and elsewhere on the question of whether the TSCA regulatory program is adequate, particularly regarding disposal. This discussion first led to consideration of the possibility that the PCB disposal program might be transferred from TSCA to RCRA.

As Chairman of the USWAG task force responsible for this issue, I have participated actively in discussions on this subject over the last several years with a broad based coalition of industry and environmental groups and with EPA. The general conclusion reached was that such a transfer would create very serious problems given the differences between the two regulatory schemes and would do so without providing any real benefit to health or the environment.

It also was clear to our group that there already is adequate statutory authority for EPA, acting under TSCA, to close any perceived regulatory gaps.

We are, however, as I mentioned, extremely disturbed by the balance of the remaining portions of S. 2693. Our principal objection is to the apparent goal of sections 3 and 4, that is, to transfer jurisdiction over PCB waste management from TSCA to RCRA.

Your statement earlier this morning, Senator, in introducing the bill made several references to liabilities which electric utility companies have incurred under Superfund, at the Rose Chemical site in Missouri, for example, despite their compliance with TSCA PCB disposal rules. My company is one of the PRP's at Rose Chemical, and we believe that the bill would not necessarily assist us.

Specifically, section 2 of the bill would fill the perceived substantive gaps in the current TSCA program. These revisions might help to protect us when we send PCB waste to disposal sites in the future, either by minimizing the likelihood that these sites will become contaminated or, if they do, by ensuring that the site owners and operators are financially capable of performing any necessary cleanup.

Sections 3 and 4 of the bill, however, would only impose requirements that could impede rather than facilitate the orderly and safe disposal of PCB waste. They would merely duplicate the existing TSCA authority.

The argument has been made that PCB waste is no different from the chemical waste regulated under RCRA and, thus, PCB's should be regulated under RCRA, too. The fact is, however, that PCB waste is different because of the manner in which Congress has chosen to regulate it.

As the House recently recognized in passing H.R. 3070, because Congress elected in TSCA to ban the manufacture of PCB's, the fundamental issue to be addressed for PCBs is not how to manage a stream of continuously generated waste but, rather, how to expedite the disposal of a finite amount of chemical no longer produced as quickly, as safely and practically possible.

The principal issue which has been raised in introducing S. 2693 is the purported need for a broader role for States in regulating PCB waste. I believe you have heard today that under TSCA's section 18, the States can effectively enforce Federal PCB standards and have the capability to adopt their own standards.

In the interest of time, let me skip over some of this and go to a second issue, and that is the question of the ability for corrective action.

Moving PCBs to RCRA also could slow down the removal of PCB's from the environment. Under TSCA, for example, PCB mobile treatment or retrofilling units now receive national or regional approvals from EPA.

An EPA permit for each specific location would be required under RCRA, however. Transfer of PCBs to RCRA would also create a disincentive to the use of such units because it would trigger the RCRA corrective action requirements on a facility-wide basis.

In sum, there is simply no demonstrated environmental need for the wholesale transfer of PCBs to RCRA as S. 2693 would require. The discrete types of requirements from the RCRA program which are deemed necessary for PCBs already would be added by section 2 of your bill. The remainder of the bill would only impose requirements which either are redundant of TSCA or are inappropriate for PCB waste.

Therefore, we support enactment of section 2 but oppose enactment of sections 3 and 4.

Thank you. I appreciate the opportunity to present our views and would be happy to answer any questions.

Senator BAUCUS. Thank you, Mr. Siedhoff.

In listening to you, I can't help but be struck with what I sense to be the intensity and the sincerity and the conviction of the States represented here, of Pennsylvania and Maryland, in saying they want this authority. That leads me to at least tentatively surmise—and they certainly so implied in their statements if they didn't state it directly—that they don't feel comfortable with and don't have much confidence in the current EPA enforcement under TSCA.

I want to ask you why shouldn't States which, arguably, are captives of their own utilities in their own States work out a more expeditious disposition for disposal of PCBs? They certainly seem to indicate that the present framework is not as sufficient or expeditious or responsible as, in their opinion, it should be.

That is the testimony of the States. As a matter of principle, why shouldn't the States work out this potential difference among utilities and environmental groups and the communities? They want to do this. They don't think that EPA is doing it. What is wrong with letting the States under RCRA, Mr. Siedhoff, continue this framework?

Mr. SIEDHOFF. Senator, in direct answer to your question, I do not have a problem with the States' working that out. I believe under the existing authorities of TSCA, they do in fact have that capability under section 18 of TSCA.

Senator BAUCUS. The States would like to have PCBs listed as a hazardous waste so that they can regulate under RCRA.

Mr. SIEDHOFF. I don't believe it is necessary for the Federal Government to declare PCBs hazardous under the RCRA program in order for the States to do that. It doesn't seem to me that that is necessary. It seems like the necessary authorities already exist.

In fact, in my State, the State has taken action to regulate PCBs under their RCRA program.

Senator BAUCUS. I don't want to get into a dispute with you. We haven't got the time, and this isn't the forum, but I think you heard the representative from the State of Maryland cite several decisions where the contrary was held and a contrary decision was reached.

Mr. **Siedhoff**. I am sorry. I am not capable of responding to the issue of legal questions.

Senator **Baucus**. But you were here when you heard that statement?

Mr. **Siedhoff**. I did hear that.

Senator **Baucus**. He stated very specifically a list of cases, too. Mr. Fortuna, how do we fix this bill? You say you like the bill. You think it is a great bill. It is a good idea, but you have——

Mr. **Fortuna**. One major problem.

Senator **Baucus**. What amendment do you recommend to fix that problem?

Mr. **Fortuna**. I think one of the approaches might be just to, as some of the other gentlemen here this morning have suggested, delete sections 3 and 4.

Again, let me just posit a couple other options. I have not cleared this with my membership, but let me just posit a couple other options.

I think it is important here to distinguish between standards and procedures. I think few people are averse to States' imposing more stringent standards. If States want to have a manifesting system, a tracking system, a permit system for disposal facilities, et cetera, if they have a more stringent limit for PCBs, if they want to prescribe a more stringent level for cleanup, those are things that really probably belong or are within their prerogative and should be so.

However, let's not lose sight of the fact that if we just do a wholesale transfer to RCRA, we are going to lose the very permit process that has made cleanup possible.

Senator **Baucus**. That has made what?

Mr. **Fortuna**. That has made cleanup and decommissioning of transformers and getting them off line as quickly as possible—has made that very system possible.

Senator **Baucus**. Don't forget we have a two-year period here where TSCA would still apply under this bill.

Mr. **Fortuna**. And if nothing happens in the interim, then, as I understand the way the bill is drafted, then the RCRA procedures would take effect. It would essentially take several companies right out of business in terms of being able to respond to the needs when they are the greatest, when most of these transformers are coming off line.

Anything done to bring these under RCRA would have to go hand in hand or part and parcel with revisions to the permitting mechanisms and the permitting regimes to make sure we had the same basic permit mechanisms under RCRA that we now have under TSCA to make sure that the mobile equipment that has made the PCB cleanup so efficient and so possible and so timely to continue.

Senator **Baucus**. Mr. Rosenthal, when I asked the representatives of the States to anticipate your objections, one of their responses, particularly from the Maryland person was that it is working. That is, utilities in the State of Maryland don't have a problem. They have worked it out, and it is working.

What about it?

Mr. ROSENTHAL. Again, I heard the response, and it wasn't quite responsive to your question. Our concern is with a new Federal regulatory scheme being put in place just when we have finally made the investment in all these various disposal facilities. The facilities are now in place. They are disposing of the waste.

A number of States have adopted regulations. Those State regulatory schemes, Senator, are working. They have been worked out in conjunction with the localities and the people in the local States.

The real question is, do we want to change the Federal regulatory scheme and put in a whole new scheme at this point?

I might add, Senator, that we haven't talked about the substance. Mr. Fortuna has a little bit. The RCRA program is far from an ideal program. One of the is significant strengths of the TSCA program has been the ability of environmentalists, industry, and EPA, to work out a scheme for the disposal of this particular waste, a scheme which is much more flexible than that of RCRA and, I would say, ought to be a model of the way disposal should be handled for other forms of waste.

Mr. Fortuna pointed out one very good example which is just impossible under RCRA which is the mobile disposal of PCB waste. There is no way of handling mobile disposal under RCRA. However, we have been able to develop that under TSCA.

There are other things we have been able to do which we can't do under RCRA, and that is one of the big concerns.

Senator BAUCUS. Well, let me just basically sum up by saying that it is the opinion of this Senator and, I think, probably the opinion of the majority of the Congress that EPA is dragging its heels. It just is not working as well as it should.

There is a parallel majority opinion, I believe, that the States are hungry to get at this question a little more expeditiously than has EPA. As a consequence, there is probably a conclusion among Members on both sides of Capitol Hill that, therefore, we should turn more of this over to the States, because they are probably going to do a better job. They want to get it done.

Back where I come from, there is a saying that is probably true throughout most of the country that you can only lead a horse to water. If he doesn't want to drink, you can't force him to drink.

We have been trying to lead EPA to water and get them to drink a little bit here, that is, to take more direct action, and they have not, in the opinion of, I think, most Members of Congress. So, I suggest that we all work out a way to address some of the more particular problems you have addressed, mobile disposal, for example.

You are closer to it, certainly, than I am, so I suggest that we address mobile disposal and other real, legitimate concerns that you have under RCRA. However, I think you will find this Congress inclined to turn over more PCB cleanup to the States as a general principle simply because the EPA has not done the job.

I would ask you during these next weeks to attempt to resolve that so we can work this out as best we can.

Mr. FORTUNA. Thank you, Mr. Chairman.

Senator BAUCUS. Thank you.

Are there any other statements any of you wish to make at this time?

[No response.]

Senator **Baucus**. If not, thank you very much. That concludes our hearing.

[Whereupon, at 11:37 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

[Statements submitted for the record and the bill S. 2693, follow:]

STATEMENT OF
THE HONORABLE JAMES J. FLORIO, CHAIRMAN
HOUSE SUBCOMMITTEE ON COMMERCE, CONSUMER PROTECTION AND COMPETITIVENESS

Hearing on the regulation of PCBs
Senate Subcommittee on Hazardous Wastes
and Toxic Substances
Thursday, August 11, 1988

Mr. Chairman, I appreciate the opportunity testify before the subcommittee this morning.

Polychlorinated biphenyls, or PCBs, are among the most deadly poisons man has created. Once PCBs are released into the environment, they decompose very slowly over a period of several decades. Plants and animals can absorb PCBs from their surroundings and concentrate these chemicals within their tissues to levels above those found in the environment. Ultimately, at the end of the food chain, humans can consume deadly levels of PCBs.

We know PCBs cause serious disease in humans, and several tragic incidents have demonstrated their dangers. Measurable amounts of PCBs can be found in soils, water, fish and milk, and many major water resources, including the Hudson River, have become contaminated with PCBs.

When the Congress was discussing, in Conference, the 1984 amendments to the Resource Conservation and Recovery Act (RCRA), EPA promised that they would bring PCBs under the requirements of RCRA. Needless to say, EPA has done nothing to impose the RCRA requirements on PCBs, and the current regulatory system for PCBs is totally inadequate.

We can no longer wait for EPA to do what they have failed to do for years. There are over 750 million pounds of PCBs still in use, and in October of this year, several hundred million pounds will be required to be disposed of under the Toxic Substances Control Act (TSCA). In the next few years virtually all of these PCBs will be taken out of service, and we will have to dispose of them.

I want to commend Chairman Baucus for introducing a bill that will put PCBs under the requirements of RCRA. I also want to commend Congressman Synar for pursuing this issue in the House. We cannot afford to ignore the dangers of PCB transport and disposal as these massive quantities of PCBs are removed from service.

It is particularly fortunate that the bill introduced by Senator Baucus applies all of the RCRA requirements to PCBs. To do less is to ignore the obvious problems of PCB disposal.

Unfortunately the House passed bill is an example of an inadequate response. There are three major deficiencies in the House bill -- first, it fails to allow the states to pass their own laws for dealing with PCBs, as the states are allowed to do with all other hazardous wastes.

Second, it fails to allow the states to enforce the federal law, as the states are allowed to do with all other hazardous wastes.

Third, it does not even allow EPA to order corrective action when they discover a problem with PCB disposal. This means EPA may discover a problem, and they won't even be able to do anything about it.

At a minimum, these changes are necessary to the House bill before it is worthy of consideration. But a much better approach is the one introduced by Senator Baucus, which is simply to shift the program to RCRA, and to treat PCBs the same way we treat other hazardous wastes.

You will undoubtedly hear that the House bill is the best that can be done this year, that there is a fragile coalition supporting it. If that is the best we can do, we should be ashamed to tell our constituents that we are doing anything on PCBs. The House bill is anti-environment because it pretends that we are dealing with PCB's while we do too little. If we want to emulate the dismal record of EPA, which says it will impose strict requirements on PCBs and then does nothing, we can pass the House bill. But we need to do much more.

Mr. Chairman, I have attached to my testimony copies of letters from seven states supporting amendments to provide the states with the authority to pass their own laws, and enforce federal law. The states have become the environmental enforcers as EPA has abdicated its role. We must ensure that the states have the authority to match their responsibility.

I appreciate the opportunity to testify, and support fully the efforts of Senator Baucus to bring PCBs under RCRA.

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF THE COMMISSIONER
CN 402
TRENTON, N.J. 08625
609 - 292 - 2885

The Honorable James J. Florio
2162 Rayburn House Office Building
Washington, DC 20515

Dear Mr. JIM ~~Florio~~:

As you know, the Department of Environmental Protection is currently seeking to regulate polychlorinated biphenyls (PCB's) as a hazardous waste. In that context, we supported your efforts to amend H.R. 3070 to apply additional provisions of Subtitle C of the Resource Conservation and Recovery Act (RCRA) to PCB's.

Your consistent efforts regarding the regulation, enforcement and remediation of hazardous wastes are especially appropriate for our State. We appreciate and encourage your continued emphasis on this very important issue.

Sincerely,

Chris Daggett

Christopher J. Daggett
Acting Commissioner

c: Senator Frank Lautenberg

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

ST. PAUL 55155

ADDRESS REPLY TO:
102 CAPITOL BUILDING
ST. PAUL, MN 55155
TELEPHONE: (612) 296-6196

June 9, 1988

The Honorable James J. Florio
Chairman, Subcommittee on Commerce,
  Consumer Protection and Competiveness
Committee on Energy and Commerce
U.S. House of Representatives
Room H2-151
House Office Building, Annex No. 2
Washington, D.C. 20515

Dear Congressman Florio:

I am writing to express my support for your efforts to amend H.R. 3070, the PCB Regulatory Improvements Act of 1988, to provide states with the authority to impose more stringent regulatory requirements on facilities which handle PCB wastes.

Mismanagement of PCB wastes poses a serious threat to the public health and the environment. In my view facilities which handle PCBs should be subject to the same strict regulatory requirements which apply to facilities which manage hazardous waste in compliance with the provisions of the Resource Conservation and Recovery Act (RCRA).

The only way to prevent mismanagement of the 140 million pounds of PCB wastes which will require treatment and disposal in the next few years is to provide each of the states with adequate authority to enforce and implement the PCB regulatory program. States should have the authority under the Toxic Substances Control Act (TSCA) to impose more stringent regulations on PCB facilities than those contained in the federal law. Congress has long recognized the key role that states have played in implementing other major pieces of environmental laws, such as Superfund, the Clean Water Act, RCRA, and the Clean Air Act. I will continue to work to ensure that each of these federal legislative initiatives, as well as more stringent state requirements which may apply, are enforced in an effective manner in the State of Minnesota.

Best regards,

HUBERT H. HUMPHREY, III
Attorney General

HHH:JGM:mah

THOMAS J. MILLER
ATTORNEY GENERAL

Department of Justice

ADDRESS REPLY TO:
HOOVER BLDG. SECOND FLOOR
1300 EAST WALNUT
DES MOINES, IOWA 50319

July 13, 1988

The Honorable James J. Florio
Chairman, Subcommittee on Commerce,
Consumer Protection and Competitiveness
Committee on Energy and Commerce
U.S. House of Representatives
Room H2-151
House Office Building, Annex No. 2
Washington, D.C. 20515

Dear Congressman Florio:

I am writing to express my support for your efforts to amend H.R. 3070, the PCB Regulatory Improvements Act of 1988, to allow states the authority to impose more stringent requirements on facilities which handle PCB's. As I understand your proposed amendment, states would be allowed to regulate PCB wastes under the Toxic Substances Control Act (TSCA) the same as states regulate hazardous wastes under the Resource Conservation and Recovery Act (RCRA).

Proper management of PCB wastes is critical to protecting the public health and environment. In my view facilities which handle PCB's should be subject to the same strict regulation that applies to facilities handling hazardous wastes in compliance with the provisions of RCRA.

Congress has clearly recognized the important role that states play in enforcement of our nation's environmental laws, such as RCRA, the Clean Water Act, and the Clean Air Act. States should have the authority under the Toxic Substances Control Act to impose more stringent requirements on facilities handling PCB's than those contained in federal law.

I support your efforts to amend H.R. 3070 and if I can provide any further assistance please contact me.

Sincerely,

THOMAS J. MILLER
Attorney General of Iowa

STATE OF NEW YORK
DEPARTMENT OF LAW
120 BROADWAY
NEW YORK, NY 10271

ROBERT ABRAMS
Attorney General

JAMES A. SEVINSKY
Assistant Attorney General in Charge
Environmental Protection Bureau

(212) 341-2453

June 22, 1988

Congressman James J. Florio
2162 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Florio:

I am writing in reference to H.R. 3070 the PCB Regulatory Improvement Act.

We in New York State feel very strongly that current federal regulation of waste PCBs is inadequate because of the lack of manifesting and other requirements applicable to all other hazardous wastes under the Resource Conservation and Recovery Act (RCRA). While we believe that the simplest method of ensuring adequate regulation of waste PCBs would be for either EPA or the Congress to add them to the current list of RCRA hazardous wastes, since that has not occurred, we believe that the enactment of manifesting and financial responsibility and other requirements included in the H.R. 3070 are an important step in the right direction.

Even if that bill is adopted however, it is essential that the amendments which you have proposed be adopted as well. It is clear that EPA does not have sufficient staff to adequately enforce the proposed amendments throughout the country, and that without state enforcement they will be rendered virtually meaningless. Although New York and several other states have been regulating PCB's pursuant to their own RCRA-type statutes, such state regulation of PCB's has been challenged by the regulated community in cases such as PEPCO v. Sachs, 639 F. Supp. 856 (D. Md., 1986). Thus your proposed Section 13 giving states the power to enforce the new TSCA provisions on a basis equivalent to EPA is of critical importance. In addition, your proposed amendment regarding retention of state authority to impose stricter regulations than the federal government, as under RCRA, is also tremendously important to state enforcement efforts.

Page Two
Congressman Florio
June 22, 1988

Particularly in light of their long lasting efforts, PCBs are capable of causing great harm to the environment. For example, because of PCB contamination in the Hudson River, New York State banned fishing for striped bass. Our state is therefore acutely aware of the adverse economic as well as environmental and public health impacts which can be caused by the improper disposal of PCBs.

We therefore thank you for your efforts to assist the states in ensuring the future proper handling and disposal of these toxic chemicals.

Sincerely,

Nancy Stearns

NANCY STEARNS
Assistant Attorney General
Chief, Toxics Section
Environmental Protection Bureau

OFFICE OF THE
ATTORNEY GENERAL
DON SIEGELMAN
ATTORNEY GENERAL
MONTGOMERY, ALABAMA 36130
(205) 261-7400

STATE OF ALABAMA

July 7, 1988

Honorable James J. Florio
Chairman, Subcommittee on
Commerce, Consumer Protection
and Competitiveness
Room H2-151
House Office Building Annex No.2
Washington, D.C. 20515

Dear Jim:

I read with interest your recent amendment to H.R. 3070 relating to retention of State authority over PCB's and enthusiastically support such an amendment. In the past, my office and other state regulatory officials have been unable to successfully control PCB's in our State despite attempts to do so because of arguments that TSCA preempts all State authority in this area. Because of the large influx of toxic substance to the Chemical Waste Management landfill at Emelle, Alabama, much of which is PCB contaminated soil or PCB liquids, our State desperately needs the ability to regulate these compounds.

Let me know what I can do to help with the passage of your amendment.

Sincerely,

DON SIEGELMAN
ATTORNEY GENERAL

DS/RCK/rh

**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

June 13, 1988

The Honorable Mike Synar
Chairman, Subcommittee on Environment,
  Energy & Natural Resources
Committee on Government Operations
B-371B Rayburn House Office Building
Washington, D. C. 20515-6145

Re: HR 3070; PCB Regulatory Improvements Act

Dear Congressman Synar:

I understand that the Subcommittee on Transportation, Tourism and Hazardous Materials is taking up HR 3070 for consideration this week. This bill will bring the regulation of polychlorinated biphenols (PCBs) in line with the requirements of the Resource Conservation and Recovery Act (RCRA) to a great extent.

I also understand that Representative Florio has offered three amendments to the Bill:

1. To give the states the same power to regulate PCB sites that they have with respect to hazardous waste facilities under RCRA, including the imposition of more stringent requirements.

2. To require PCB operators to clean up spills within RCRA standards, by imposing RCRA-corrective action authority on PCB facilities.

3. To give the states the same powers assigned to EPA, to enforce federal and more stringent state requirements.

This office supports HR 3070 and the Florio Amendments. From our point of view, the regulation of PCB wastes under the Toxic Substances Control Act (TSCA), while other wastes are regulated under RCRA, has created a regulatory dichotomy that has hindered environmental enforcement. This bill, as amended, should go a long way towards resolving these problems and promoting the effective enforcement of PCB regulations.

512/463-2100 SUPREME COURT BUILDING AUSTIN, TEXAS 78711-2548

Please give me a call if I can be of any assistance or if you have any questions.

Sincerely,

Nancy N. Lynch

Nancy N. Lynch
Assistant Attorney General
Chief, Environmental Protection Division

P. O. Box 12548
Austin, Texas 78711-2548
512/463-2012

THE/bd
cc: The Honorable James J. Florio
Chairman, Subcommittee on Commerce,
Consumer Protection and Competitiveness
Committee on Energy and Commerce
Room H3-161, House Office Building
Annex No. 2
Washington, D. C. 20515

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RECEIVED
JUL 13 10:19
REP. JAMES J. FLORIO

July 14, 1988

The Honorable James J. Florio
United States House of Representatives
Washington, D.C. 20515

Re: PCB Regulatory Improvements Act

Dear Congressman Florio:

I am writing to express my complete support for your efforts to assure that federal law preserves the right of states to regulate the disposal of PCB wastes. As you know, the Toxic Substances Control Act ("TSCA") permits such state regulations and many states, including Maryland, have exercised the authority conferred by TSCA to regulate PCBs. Because of the tremendous hazards presented by PCBs, this authority should not be taken away from the states.

Again, thank you for your efforts on this important issue.

Very truly yours,

J Joseph Curran Jr

J. Joseph Curran, Jr.
Attorney General of Maryland

JJC:ket
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JOHN K. VAN DE KAMP
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July 22, 1988

The Honorable James J. Florio
Chairman, Subcommittee on Commerce,
Consumer Protection and Competitiveness
Room H2-151
House Office Building, Annex No. 2
Washington, D.C. 20515

Dear Congressman Florio:

Re: State Regulation of Waste PCB's As Hazardous Waste
(H.R. 3070 Amendments)

The State of California devotes substantial resources to a statewide enforcement program to address public health and environmental pollution problems caused by the improper handling of hazardous waste. A significant aspect of this enforcement effort is the regulation of the storage, transportation and disposal of the class of very hazardous chemicals known as polychlorinated biphenyls (PCB's), in circumstances when PCB's constitute hazardous waste under California law. Hazardous waste problems involving PCB's have been identified in every major population center in California.

Although this office successfully has litigated the issue of whether the federal Toxic Substances Control Act (15 U.S.C. § 2617) preempts a state from regulating waste PCB's as hazardous waste, there exists no appellate court decision of statewide application which resolves the issue with sufficient finality. Federal appellate law also is not developed adequately on this issue. As a result, the preemption defense continues to be raised in PCB hazardous waste enforcement actions in California.

The California Attorney General supports your pending efforts to amend the Toxic Substances Control Act to clarify that states are not preempted from regulating waste PCB's as hazardous waste. Such an amendment will eliminate further lengthy and costly litigation over jurisdictional defenses raised by polluting parties and allow California to address the substantive public health and environmental problems caused by the unsafe storage, transportation and disposal of waste PCB's.

Hon. James Florio
Page 2
July 22, 1988

Please make our views known to the appropriate members of the House of Representatives and the Senate. Thank you very much for your cooperation.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

Timothy R Patterson

TIMOTHY R. PATTERSON
Deputy Attorney General

STATEMENT OF
JEFFERY D. DENIT
DEPUTY DIRECTOR FOR THE OFFICE OF SOLID WASTE
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON HAZARDOUS WASTES AND TOXIC SUBSTANCES
OF THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
U.S. SENATE

August 11, 1988

Mr. Chairman and members of the Subcommittee, I am Jeffery Denit, Deputy Director for the Office of Solid Waste, and I am here to represent Dr. J. Winston Porter, Assistant Administrator for the Office of Solid Waste and Emergency Response. I am accompanied by Vic Kimm, Deputy Assistant Administrator of the Office of Pesticides and Toxic Substances, and Mike Walker, Acting Associate Enforcement Counsel for Pesticides and Toxic Substances, Office of Enforcement and Compliance Monitoring. I appreciate the opportunity to be here today to discuss how operation of the hazardous waste program created under Subtitle C of the Resource Conservation and Recovery Act (RCRA) relates to the current regulatory program for PCBs which was created and is managed under the Toxic Substances Control Act (TSCA). EPA has spent considerable time over the past year addressing this issue, and my remarks today will convey some of the conclusions we have drawn on these issues.

I would like to briefly review the development of the PCB management program under TSCA and related aspects of developments under the RCRA program over the past decade. I will close by conveying the reasons the Agency has reached the conclusion that it is desirable to continue to administer these programs under separate statutes during the peak PCB disposal and the Hazardous and Solid Waste Amendments (HSWA) implementation periods before us.

Differences Between PCBs and Hazardous Wastes Regulated Under RCRA

Historical. Congress enacted TSCA in 1976, and included PCBs because of two specific concerns: 1) huge production volumes in electrical and other equipment and products could become health hazards if improper disposal results in releases into the environment, and 2) the widespread distribution of PCBs posed a potential for widely distributed health threats. TSCA requirements and subsequent EPA regulations responded to these concerns by banning the production of PCBs, specifying storage and disposal requirements unique to PCBs, and focusing Federal authorities on permitting, inspection, and enforcement of PCB management. No specific authority was provided to delegate management to the states. Since that time, the Federal PCB program has continued to focus on problems specific to PCBs.

In 1976, the RCRA program was also enacted to cover the management of other wastes. Twelve years have passed, and the programs have continued to address different management concerns at the same time that they address similar potential health concerns. We believe that the two programs are equally protective, and that there are many benefits to maintaining the regulatory distinctions.

Potential Health Effects. Insofar as the potential for damage to human health and the environment, there is little to distinguish PCB wastes from listed hazardous wastes under RCRA though specific tests used as the basis for listing hazardous wastes under RCRA have not been performed. PCBs are persistent in the environment, are not readily degradable, and tend to build up in the fatty tissues and vital organs of humans, animals, and aquatic life. PCBs have been shown to cause chronic toxic effects in animals and cause reproductive problems, gastric disorders, skin lesions, and cancerous tumors.

Management Issues. A primary distinguishing feature of PCBs is that while many or most hazardous wastes listed under RCRA continue to be produced, production of PCBs was specifically banned by Congress when it enacted the Toxic Substances Control Act. TSCA directed EPA to establish a regulatory framework for disposal of PCBs, and to phase out the existing broadly dispersive uses of these materials. Regulations addressing production, distribution, or restricted use of chemicals before they become wastes are neither envisioned nor authorized under RCRA. In addition, regulatory distinctions such as those for small quantity generators and mobile treatment unit permitting developed differently in response to the different nature of the problems posed. I will come back to these differences later.

Management of the RCRA Program Depends Heavily on the States for Permitting, Inspections, and Enforcement

The PCB program is managed by EPA, with responsibilities divided between Headquarters and Regional offices. Day-to-day management of the RCRA program is the responsibility of EPA's Regional offices and the states, with policy direction and oversight from Headquarters.

At this time, 44 states are authorized to operate their own base RCRA programs (i.e., all pre-HSWA provisions) totally in lieu of the Federal program. State authorization is specifically provided for in the statute. It is granted by EPA when the state demonstrates that it has adequate statutory authority to operate the program, that its regulations are substantially equivalent to those in effect in the Federal program, and that it has the capability to implement the program. States may design their programs to be more stringent or broader in scope than the Federal program. One illustration of the ways states have exercised this option is that 18 states have listed PCBs as a hazardous waste. This is considered a program which is broader in scope than the Federal program. The combined level of state resources used to administer the RCRA program is much greater than the level of Federal resources.

The TSCA program is largely managed by EPA Regional offices, which are responsible for permitting, compliance monitoring, and enforcement of stationary PCB facilities in their respective Regions. Permitting for mobile treatment units and technologies is from Headquarters and is significantly more flexible than current RCRA permitting processes. This is a particularly important method of treatment and disposal in the PCB program. Once these units or technologies are permitted under TSCA, they may operate nationwide without a site-specific permit. We have found that all, or virtually all, approved PCB landfills and stationary incinerators are located at RCRA permitted or interim status facilities. This means that those units are subject to RCRA corrective action, which applies to any solid waste management unit within the facility boundary.

State participation is of a different nature in the PCB program. EPA has opted to provide funds to 14 grant states for conducting inspections. Results of these inspections are turned over to EPA for case development and action. We hope to be able to expand State involvement in the future.

In the RCRA program, authorized states have primary enforcement responsibility, although EPA retains enforcement authority under sections 7003 and 3008. EPA can assist the states by assuming the lead in cases which they refer to us, or we can undertake an action independently when we believe that the state has responded inadequately. I am happy to be able to tell you that the latter is an unusual occurrence.

Records of combined state and Federal RCRA actions between October 1, 1987 and July 15 of this year indicate that 2,414 RCRA TSDFs and 4,833 generators have received compliance monitoring inspections.

Since 1985 Federal PCB inspectors in the Regional offices and state inspectors in states with grant dollars for that purpose are able to complete approximately 2,400 compliance monitoring inspections each year.

EPA has the authority to revoke or suspend PCB disposal permits in emergency situations, when previous violations have not been remedied, or when companies make false statements of material facts in permit applications. The Agency is currently preparing proposed regulations which will establish standard procedures for suspension and revocation of permits, a process which has previously been directed through guidance.

Other options for acting when PCB inspections establish violations of permit conditions include initiation of criminal investigations, and filing civil administrative or judicial complaints.

As Jack Moore testified yesterday before the House Subcommittee on Environment, Energy, and Natural Resources, EPA has amended its Compliance Monitoring Strategy to target comprehensive inspections at PCB permitted disposal facilities and commercial storage facilities. These inspections are undertaken in addition to the remaining compliance monitoring and enforcement actions required under TSCA for the thousands of firms and individuals who in one way or another process, distribute, use, or store PCBs.

Regulatory Approaches Are Being Drawn Together

The hazardous waste management program created under Subtitle C of RCRA requires generators to manifest hazardous wastes while the existing PCB regulations do not. This is one of the issues we have discussed over the past year, and one which we are very close to having resolved. The Agency will shortly propose a rule which will require these facilities to obtain identification numbers and use a shipping manifest tailored to PCB equipment, thus facilitating enforcement under TSCA. As Dr. Moore indicated in his testimony before the House yesterday, this rule will improve our ability to target enforcement actions by improving our information on the identities and locations of commercial storers of PCB wastes.

You may be interested to know that most generators, transporters, storers, and disposers of PCBs are already using a manifest system. The use of a voluntary system apparently has arisen as handlers (including generators, transporters, storers, and disposers) seek to limit future liabilities and to maintain records of generators who may share in those liabilities should they occur. There would also appear to be a concern on the part of the more responsible segment of the regulated community to distinguish themselves from the bad actors.

PCB regulations prohibit the storage of PCB wastes for longer than one year. This period is actually shorter for a given PCB handler, because the compliance policy considers a generator to be in compliance only if the waste is shipped no later than 9 months after generation. This policy was adopted to allow adequate time for the transporter and final disposer to comply with applicable regulatory requirements. Accumulation of hazardous wastes for more than 90 days in the RCRA program requires a permit -- however, there is not an explicit limit on the total length of storage allowable except under certain specific circumstances (e.g., accumulation for treatment prior to disposal under the land disposal restrictions). The TSCA program applies substantive standards for storage of PCB to wastes with concentration of 50 ppm or higher. Prior EPA approval is required for disposal of PCBs in concentrations greater than 50 ppm, and promulgated standards for disposal are in place. The RCRA program does not typically distinguish among listed wastes on the basis of concentration, but on its source. Regulating the PCB wastes under RCRA by source would require EPA to distinguish the innumerable sources of the wastes and the 44 authorized states to revise their hazardous waste programs to conform with the Federal program as it looked after listing PCB sources. Both these efforts would be extremely resource intensive, particularly in light of the fact that PCBs are already effectively controlled under another statute administered by EPA.

Permitting mobile treatment technologies is an area in which the Agency could lose considerable flexibility if PCBs were transferred to RCRA. Mobile treatment technologies permitted under the PCB program are not required to have a separate permit for each facility at which they operate. The current TSCA procedures and the level of public involvement are directly related to the time period and scale of the projected disposal activities, and to date have not encountered the type of public resistance which sometimes occurs under the RCRA permitting program. While we are very close to promulgating permitting requirements for mobile treatment units under RCRA, these requirements could potentially lengthen the permitting process for PCB incinerators. Consequently there would be potential delays in our progress toward the statutory goal of removing PCBs from use, which has been greatly furthered by the speed of permitting mobile technologies.

Moving Regulation of PCBs to RCRA Would Double or Triple the Current RCRA Workload

Production of new PCBs was prohibited by TSCA, but the orderly phaseout and disposal of existing stocks of PCBs has been a project of very large proportions. Some 1.25 billion pounds of PCBs were used domestically in products since the introduction of PCBs into commerce in 1929. By 1978, when the TSCA PCB regulatory program began, there were still about 758 million pounds of PCBs in use in millions of discrete products, with dielectric uses in transformers and capacitors accounting for the largest quantities.

A primary distinguishing feature of PCB disposal, therefore, is the extent to which PCBs are dispersed among end use products when they are "generated," that is, when they first become wastes. Many of these products were designed intentionally to contain PCBs, while many others became contaminated with PCBs inadvertently during manufacturing, servicing, and recycling activities involving the equipment and fluids.

The result is that there are many millions of sites of PCB use in products such as transformers, capacitors, and heat transfer equipment. The PCB concentrations in these products can range from a few parts per million to nearly 100 percent PCB. Our 1988 estimates indicate that we may expect PCB wastes to be generated in the future from more than 350,000 transformers with PCB levels greater than 500 ppm. There are also estimated to be 2 million PCB Large Capacitors, nearly 20 million contaminated mineral oil transformers with PCB levels below 500 ppm, over 200 million small PCB capacitors in consumer appliances and lighting equipment, and nearly 1 million other articles of equipment containing PCBs at varying levels. The magnitude of the PCB problem is amplified further when PCBs from pre-TSCA disposal practices are found in sewage sludges, dredge spoils, and in other unexpected contexts.

Required phaseouts of PCB uses in certain electrical equipment will bring a peak period of PCB disposal during the 1988 to 1990 timeframe. This peak period of disposal will occur because, in addition to the usual volume of PCB disposal that occurs when PCB equipment is retired from service due to failure or obsolescence, the PCB regulations will require that equipment and PCB fluids that otherwise would be fit for use or reuse be handled as waste.

The immensity of the PCB waste universe and the range of its concentrations amoung end use products distinguishes PCB waste generation from the generation of the more typical RCRA hazardous wastes. The numbers of PCB products and the variability in PCB concentrations found in these products led to a regulatory approach that places greater emphasis on situations which pose greater risks.. Since the beginning of the TSCA PCB program, EPA has concluded that the requirements for handling PCB wastes should be graduated according to the concentration of the PCBs. So, the higher concentrations (above 500 ppm) wastes are earmarked primarily for incineration, while regulated wastes of lower concentrations (50-500 ppm) may be disposed of either by incineration or by disposal in specific chemical waste landfills or in alternative physical or chemical treatment processes.

Bringing these wastes into the RCRA system, which does not as a general practice regulate based on waste concentration, would result in a tremendous increase in the permitting workload, and would ultimately require significant resource increases to the states, which have been at a steady funding level in the RCRA program for several years. Such a move would also be likely to result in a short-term diversion of resources from implementation of the significant new provisions of RCRA which are now coming on line such as the land disposal restrictions program and corrective action.

Conclusion

Promulgating PCB regulations under RCRA would take longer than promulgating conforming regulations where they are desirable under TSCA because of the complicated issues and anticipated public comment involved with revising RCRA regulations to incorporate PCBs. EPA concluded that the timetable for promulgating RCRA regulations could extend beyond the 1990 disposal deadlines currently required under TSCA, or come so close as to provide insufficient time for either industry or the government to adequately respond. Regulatory revisions to TSCA are currently on a schedule to provide appropriate response time.

Issues which have arisen in our discussions with environmental groups and industry focus on a tracking system, prior approval for storage facilities, and enforcement procedures.

We have spent a considerable amount of time working through these issues in detail, both within the Agency and with a working group of environmental and industry representatives. The

Administrator charged the working group with evaluating all feasible alternatives for the regulation of PCBs, giving special attention to the nature of the problem posed by the universe. He indicated that environmental protection provided by each of the options should be a primary consideration in development of their recommendation. The participants in these discussions reached a consensus that improved TSCA regulations were the preferred option, and offered environmental protection equivalent to that afforded hazardous wastes under the RCRA program. The Administrator was provided a detailed briefing and fully concurred with the conclusions reached by the working group and presented to him by Agency staff.

EPA has moved forward agressively over the past year to amend the TSCA regulations accordingly. Dr. Moore testified yesterday in the House concerning EPA's record over the past year in this effort. His testimony has been entered into the record, so I will summarize a few of EPA's key accomplishments here. A proposed rule which imposes a tracking system using a manifest very similar to the one used in the RCRA program should be published in the Federal Register shortly. It also requires storage facilities to gain prior approval as well as financial responsibility (this issue is raised in the Preamble for comments). This regulation will significantly improve our ability to identify, and therefore, take vigorous enforcement action against, those previously unidentified handlers, and we will act to address that segment of the regulated community.

We have also: 1) begun to issue PCB disposal permits that routinely include requirements for closure and financial responsibility, 2) issued new guidance to the Regional offices for permitting PCB disposal facilities, and 3) modified the Agency's compliance monitoring strategy to target permitted disposal facilities and commercial storage facilities.

We believe that moving the management of PCB wastes into RCRA, as required in the bill you are currently considering, is unnecessary, given the progress we are making in improving the TSCA regulations, and that such a move has significant drawbacks.

As I mentioned a few minutes ago, a good deal of flexibility in permitting mobile technologies would be lost, which could slow progress toward the overall goal of removing PCBs from service, and, as wastes, from our environment. In addition, our analysis has shown that some provisions of RCRA would not be appropriate for PCBs. Examples include the requirement to obtain a unique identification number for each location -- applied to PCBs this would require a separate number even if only one transformer were located there; or, the RCRA requirement for a permit whenever storage, even onsite, lasts longer than 90 days -- an abandoned transformer station would be required to have a permit even if it contained only one transformer, and access was controlled by a surrounding locked fence entered only once a year by service personnel.

The transfer of PCBs to RCRA would also introduce a large number of new facilities into the potential RCRA permitting universe, requiring significant resources at a time when we are working very hard to meet statutory RCRA permitting deadlines for treatment, storage, and disposal facilities already covered in RCRA and to put in place the final regulations to improve hazardous waste management and fully implement the HSWA. In addition, confusion caused in the regulated community could be substantial at a time in which PCB waste disposal is expected to peak because of the requirement to phase out electrical equipment containing PCBs.

For all of these reasons, EPA believes that for the present and the near-term future the best course of action is to continue to amend our regulatory and enforcement activities under TSCA as needed, rather than transfer the regulatory aspects of the PCB waste program to RCRA and risk serious disruptions of both programs as well as confusion in the regulated community at a critical period in the implementation of each.

This concludes my prepared remarks. I will be happy to respond to your questions.

TESTIMONY OF

ARTHUR A. DAVIS, SECRETARY
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES

BEFORE THE U.S. SENATE SUBCOMMITTEE ON HAZARDOUS WASTES AND TOXIC SUBSTANCES
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

August 11, 1988

THE REGULATION OF PCBs BY THE FEDERAL GOVERNMENT

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify before you today. I am Arthur A. Davis, Secretary of the Pennsylvania Department of Environmental Resources.

The Pennsylvania Department of Environmental Resources is pleased that the United States Senate is considering giving expanded coverage to the regulation of PCBs. Like many other of the larger industrial states, Pennsylvania has many PCB contamination problems that we have had to concern ourselves with to protect public health and our constitutionally protected natural resources. These experiences have led us to question the current federal structure and approach to the regulation of PCBs. In fact, our recent experience in the matter of Texas Eastern Gas Pipeline Company (Texas Eastern) leads us to conclude that the current federal approach to PCB clean-up is seriously flawed, does not take the legitimate interests of a state's attempts to protect health and environment into consideration and is unacceptably inconsistent with the developing procedural approaches to the clean-up of other hazardous substances. We believe that the Texas Eastern experience serves as an unfortunate model of what is wrong with the current federal approach to the clean-up of PCBs.

My testimony will discuss several issues:

1) Pennsylvania's recent experience with the United States Environmental Protection Agency (EPA) in the matter of Texas Eastern.

2) Conclusions on PCB regulation learned from this Texas Eastern experience.

3) Comments on proposed legislation.

PENNSYLVANIA'S TEXAS EASTERN EXPERIENCE WITH EPA ON THE CLEAN-UP OF PCB CONTAMINATION

A) **Chronology of Pennsylvania Actions.**

On February 27, 1987, the Department issued an Order to Texas Eastern concerning its pipeline solid waste and hazardous waste disposal practices at Company facilities in the Commonwealth. The Order was issued within days of the Department's discovery through newspaper articles that Texas Eastern had maintained disposal pits for pipeline liquids at its sites, that the liquids

NOTE: Attachments to this statement have been retained in committee files.

contained PCBs, and that the Company had been in negotiations with EPA concerning assessment and clean-up. Neither Texas Eastern nor EPA had notified Pennsylvania, prior to the newspaper revelations, of the existence of the pits, the nature of their use, or the EPA/Texas Eastern negotiations which had been in progress for several years.

The Department's February 27, 1987 Order required the Company to submit documentation concerning the Company's waste disposal practices and waste handling activities at the various stations. The Order specifically required information on pipeline liquid storage, disposal and burning. The order also required the Company to submit a groundwater assessment and monitoring plan and a soil contamination assessment plan for each Pennsylvania site.

On April 1, 1987, Texas Eastern and the Department executed a Consent Order and Agreement which required the Company to perform site assessment activities at 18 of its 19 Pennsylvania sites. The April 1987 Consent Order and Agreement provided for a comprehensive approach to assessment of soils and waters both on and off the Texas Eastern sites. It required the sampling of pipeline liquid pits, on- and off-site surface soils, and sediments. The Consent Order and Agreement also required the installation of upgradient and downgradient monitoring wells. Further, Texas Eastern was required to perform additional studies to determine if there were other disposal areas present at the sites. Finally, the Consent Order and Agreement required Texas Eastern to install source controls at its facilities where pipeline liquids or compressor oils were being, or could potentially be, discharged onto the ground or into the air.

The Consent Order and Agreement required the company to submit clean-up plans for disposal pits, on- and off-site surface soils and sediments. The Consent Order and Agreement did not establish a clean-up level for these various media. It did, however, require the Company to evaluate clean-up plans which used a soil clean-up standard for PCBs of one part per million.

On July 9, 1987, Governor Casey wrote to EPA Administrator Lee Thomas informing him of PA DER's actions and stating that it would be unfortunate and inappropriate for EPA to take a position on clean-up levels without input from the Commonwealth of Pennsylvania. Governor Casey's letter further stated that the "Commonwealth should have an opportunity to be a full participant in any negotiation before EPA takes any position on clean-up levels or methods."

EPA did not, however, provide PA DER with an opportunity to participate in the negotiations with Texas Eastern. Instead, on November 7, 1987, EPA announced that it had reached an Agreement In Principle ("AIP") with Texas Eastern. In late November of 1987 representatives of PA DER met with representatives of EPA to discuss PA DER's concerns about the AIP. Although PA DER was never allowed to see the AIP, PA DER expressed concerns to EPA personnel about some of the issues identified in various fact sheets that had been given to PA DER on the AIP by EPA.

In January, 1988, an additional agreement between Texas Eastern and Pennsylvania was executed. This agreement, termed a Stipulated Agreement by the parties, provided that the Company would pay the Department's first year oversight costs through February 25, 1988, in an amount not to exceed $1 million.

The Stipulated Agreement also provided for negotiations between the Department and Texas Eastern on the issues which had not been resolved through the April 1, 1987, Consent Order and Agreement. The principal issue to be negotiated was the clean-up standard to be used in the remediation of surface soils, sediments, and groundwater at the sites. The negotiations were also to cover the payment of civil penalties, including the payment of state oversight costs, by Texas Eastern to the Commonwealth and the establishment of site remediation schedules.

In March of 1988, after two months of negotiating, the Department determined that Texas Eastern was not negotiating in good faith and that no progress was being made, or would be made, on the important clean-up and civil penalty issues. Therefore, on March 16, 1988, the Department took four additional actions concerning Texas Eastern.

The first action was the issuance of an Order which required the Company to submit assessment and remediation plans for a large number of additional disposal areas which had been identified since the execution of the April 1, 1987 Consent Order and Agreement. These disposal areas included additional pipeline liquid pits plus chromate coolant pits, hydraulic fluid pits, fire fighting pits and trash disposal areas.

Second, the Department issued an Order establishing a schedule for submission by the Company of groundwater clean-up plans for each of the sites.

Third, the Department issued a $12.9 million Civil Penalty Assessment pursuant to the Pennsylvania Solid Waste Management Act for violations by Texas Eastern of the Solid Waste Management Act from 1980 to the present.

Fourth, the Department filed a Complaint with the Pennsylvania Environmental Hearing Board seeking civil penalties of $48.4 million for violations by Texas Eastern of the Commonwealth's Clean Streams Law from 1970 to the present. The Complaint also sought Departmental oversight costs, abatement costs, and costs of public nuisance and harm to natural resources.

With the addition of these four actions to the Consent Order and Agreement, the Department had established assessment and remediation requirements, or the requirement of submittal of assessment and remediation plans, for all of the soil and water media at the Texas Eastern sites in Pennsylvania. Further, the Department had presented Texas Eastern with civil penalties commensurate with the seriousness of the situation.

Each of these four cases is now in litigation before the Pennsylvania Environmental Hearing Board. A first pre-hearing conference has been held and a discovery and litigation schedule has been established. EHB Chairman Maxine Woelfling, the presiding officer on the case, has set aside the month of April, 1989, for hearings.

In addition to the four legal steps just outlined, on March 16, 1988 Governor Casey again wrote to EPA outlining Pennsylvania's concerns with EPA's handling of the Texas Eastern matter. This letter highlighted three major issues of concern to Pennsylvania. They were:

1) EPA's failure to include a clearly defined state role in the assessment and clean-up process;

2) The totally inadequate, oversight and civil penalty amounts; and

3) The possible factual and legal precedents established by EPA's action and their negative potential impact on independent state actions.

Governor Casey's March 16, 1988 letter further stated that "... it is imperative that EPA in no way impede state actions through its settlement negotiations . . . ."

B) **Assessment Results.**

Pursuant to the April 1, 1987, Consent Order and Agreement and under the supervision and oversight of the Department, Texas Eastern and its contractor Roy F. Weston, Inc. have installed approximately 165 groundwater monitoring wells and taken over 5,000 soil samples and 500 water samples. In addition, the Department has taken approximately 1,500 soil, fish, milk, livestock liver and water samples. The results of the sampling show that site contamination is extensive and also quite variable. Further, each site presents separate and distinct environmental assessment and remediation challenges.

The Texas Eastern sites in Pennsylvania extend from Ohio to New Jersey. Due to the highly variable nature of Pennsylvania's geology, hydrogeology and soil types, the sites exhibit markedly different patterns of groundwater depth and movement and soil characteristics. Some of the sites are in coal mining regions and have been undermined, one is near a limestone quarry, some have streams on or adjacent to the properties, some are relatively flat while others are situated in steep Appalachian terrain, one is next to a state park and lake.

The Department has found that each of the Pennsylvania sites is unique. This uniqueness extends to both physical/geological parameters and to site practices. This has resulted in variations in the manner in which pipeline liquids and PCB oils have been released to the environment, have entered and migrated in the groundwater, and have been found in the soils and sediments.

Soil sampling results have revealed PCB and BTXE (benzene, toluene, xylene, and ethylbenzene) soil contamination at, at least, 16 sites. One site had a soil sample reveal PCB contamination as high as 230,000 ppm on-site and as high as 2,785 ppm off-site near a chicken coop. While such a high result is not the norm, the levels of PCB and BTXEs in the soil are cause for serious concern. The soil sampling results have indicated contamination both in and adjacent to pipeline liquid pits as well as on station surface soils, gravel roads, drainageways, near equipment, and along fencelines. Surface soil samples have shown PCB contamination both on and off of the Pennsylvania sites. Sediment sampling in the streams has shown that PCBs have migrated or eroded off-site into some of the adjacent streams at, at least, 13 sites. Sediment contamination has been found up to one mile off-site.

Soil boring from pits confirms the use of pits as disposal sites and the need for pit clean-up. Texas Eastern's own proposal to PA DER for clean-up of pipeline liquid pits shows that at least 23 pits will have to be excavated. Additional liquid pits, as well as trash pits, chromate coolant pits, hydraulic fluid pits and firefighting pits, may also have to be excavated. These areas are the subject of additional assessment activities.

Water sampling results have shown PCB and BTXE contamination in surface water seeps, ponds, springs and streams on and adjacent to Texas Eastern facilities. Groundwater contamination has been found at 13 of the Pennsylvania sites to date. Of the 13, nine sites have PCB contamination, two have BTXE contamination, and two sites have both PCB and BTXE contamination. At least three sites have off-site groundwater contamination and other sites are anticipated to show off-site contamination with additional testing. The groundwater monitoring program has found PCB contaminated floating oil in groundwater both on and off some of the sites. At certain sites, the Department believes that final groundwater characterization is near at hand, if not already complete. For other sites, additional groundwater monitoring well installation is on-going.

C) Pennsylvania Has Responded Quickly And Effectively To The Texas Eastern Situation.

The assessment activities being performed by Texas Eastern under the April 1, 1987 Consent Order and Agreement and the Department's sampling along with the additional assessment activities that Texas Eastern will perform under the March 16, 1988 Disposal Area Assessment and Remediation Order will provide the Department and Texas Eastern with a comprehensive assessment and characterization of the 19 sites in the Commonwealth. In fact, EPA has agreed to accept the Pennsylvania soil and water sampling to date as being in conformance with the terms and procedures required under the EPA/Texas Eastern Consent Decree. While some additional sampling points have been required by EPA, the Pennsylvania assessment activities to date have been completely incorporated into the Texas Eastern/EPA Agreement. To the Department's knowledge, the assessment activities in Pennsylvania are substantially ahead of assessment activities being performed in any of the other states at this time. This progress has been made despite the fact that the Department did not discover this problem until February, 1987.

Pennsylvania has more Texas Eastern sites than any other state affected by the pipeline. Both of Texas Eastern's pipelines, the PennJersey Line and the WEP Line, extend the full length of Pennsylvania from Ohio to New Jersey. Further, a significant number of the Pennsylvania sites had turbines which utilized PCB lubricating oil. In order to respond to the unprecedented oversight demands presented by Texas Eastern's sites, the Department has applied substantial resources and personnel. The two Texas Eastern pipelines cross through three separate DER regions and the Department has been required to add staff to deal with the enormous logistical and technical problems presented by the 19 different sites. In addition there are other remote locations suspected of being contaminated that we have not yet addressed. These include valve stations, meter stations, remote pig receivers and stockpiles of used contaminated pipe.

Despite the tremendous demands placed upon the Commonwealth by the presence of 19 Texas Eastern's sites, there can be no doubt from a review of the activities to date that Pennsylvania is proceeding in a responsible fashion to comprehensively address the environmental and legal problems raised by Texas Eastern's activities.

D) The EPA Consent Decree And The Pennsylvania Response.

Incredible as it seems, on June 10, 1988, a notice appeared in the Federal Register that a complaint and a consent decree had been filed by EPA and Texas Eastern in the United States District Court for the Southern District of Texas. This decree was negotiated without allowing the Commonwealth of Pennsylvania to play a role and ignored the unprecedented activity that had and will continue to take place at the state level. This agreement has the sorry effect of putting Pennsylvania and EPA into adversarial positions on a number of issues that deal directly with the health and protection of the citizens of our state and the constitutionally protected resources of the Commonwealth.

This agreement was entered despite two written requests from Governor Casey that no agreement be entered into unless the state had a role. More significantly, Pennsylvania's worst fears about a separate agreement have materialized in the Decree. EPA has agreed to on-site PCB soil clean-up levels of 25, 10, and 5 ppm, levels that Pennsylvania believes may not be adequately protective of public health and the environment, putting Pennsylvania in the position of having to disagree with the expertise of the federal government on this most important issue for the Commonwealth.

The decree also settles many issues under the Toxic Substances Control Act (TSCA), Superfund (CERCLA), the Resource Conservation and Control Act (RCRA), and most alarmingly, **analogous state law**. Quite remarkably, the decree settles all civil penalties under RCRA, CERCLA, TSCA, and **analogous state law**, for all violations under those statutes up to the entry of the decree notwithstanding the fact that the only agreements that EPA was able to obtain from Texas Eastern of any substantive nature was the agreements for on-site PCB contamination. The agreement contains no commitments from Texas Eastern to clean-up at any level on-site soils for non-PCB contaminants, off-site soils, stream sediments, or groundwater. It is beyond our comprehension why EPA would settle all civil penalties, and thereby waive important enforcement tools, without first obtaining binding commitments to do a complete clean-up. By settling claims under **analogous state law**, EPA has put Pennsylvania in the position of having to take whatever legal steps that are necessary to protect our options.

Pennsylvania has many other concerns about the content of the decree. These concerns include an extraordinarily long dispute resolution process that Texas Eastern may invoke for any issue under the decree, certain limitations on-site characterization, provisions which give automatic extensions to clean-up schedules, the failure to integrate groundwater clean-up with soil clean-up schedules, the limitations on civil penalties and oversight costs and many others. For a more thorough discussion of Pennsylvania's concerns about the decree, see the attached COMMENTS OF THE COMMONWEALTH OF PENNSYLVANIA ON THE TEXAS EASTERN CONSENT DECREE.

It is abundantly clear to Pennsylvania that EPA has violated its responsibility to consult with Pennsylvania in agreeing to this Consent Decree and in filing an action involving state sites. This action of EPA's is moreover a violation of several provisions of federal and state law and a Memorandum of Agreement between EPA and PA DER. As a matter of federal law it is unlawful for EPA to take RCRA action against Texas Eastern when a state that has been authorized to implement RCRA, such as Pennsylvania, has taken comprehensive, remediation, assessment, and civil penalty actions. It is also clearly a violation of the Memorandum of Agreement, which was executed by EPA when PA DER was authorized to implement RCRA, for EPA to overfile where a state has taken aggressive enforcement action.

Regardless of whether and under what circumstances EPA can take federal RCRA enforcement action, it is even clearer that EPA cannot allege, settle, and waive state claims in an action that a state has not participated in. For a more complete discussion of these legal issues, I refer you to the attached comments on the decree.

From the above, it should be clear that PA DER is deeply disturbed by the procedures employed by EPA in agreeing to the Consent Decree, by the content of the decree, for what it has agreed to and what it has failed to achieve, and by the unlawful exercise of authority of the United States. For this reason, the Commonwealth has been forced to take three actions in regard to the decree in order to protect our rights: (1) PA DER has filed the extensive comments against the decree; (2) Governor Casey has petitioned Administrator Lee Thomas of the Environmental Protection Agency to have all references to Pennsylvania removed from the decree so that it is abundantly clear that this decree has no effect on Pennsylvania's ability to have Texas Eastern fully comply with the clean-up requirements of Pennsylvania law; and (3) Pennsylvania is filing suit against EPA through the process of intervention in the Texas court. This legal action will request that the court reach the conclusion that the decree has no effect in Pennsylvania or in the alternative have the court declare that the decree is unlawful and not in the public interest.

PENNSYLVANIA CONCLUSIONS ON FEDERAL REGULATION OF PCBs DRAWN FROM ITS TEXAS EASTERN EXPERIENCE

The lessons Pennsylvania has learned from this matter include the following:

1) The federal law on the regulation of PCBs must provide express roles for the states;

2) EPA should never negotiate agreements for the clean-up of any hazardous substances including PCBs without giving a state opportunity to participate;

3) It does not make any sense to regulate the transportation, storage, treatment and disposal of PCBs any differently than any other hazardous substance;

4) Many of the common assumptions assumed about the fate and transport of PCBs are not supported by actual field data;

5) There should be strict limitations on EPA's ability to overfile in a state where the state is taking prompt enforcement action.

A) An Express Role For The States In The Regulation of PCBs.

The Texas Eastern problem has led Pennsylvania to conclude that the role of the states in the regulation of PCBs must be expressly and clearly provided for in federal law. PCBs, like other hazardous substances may seriously threaten human health and the environment of a state and, therefore, the level of clean-up is a matter of great importance to a concerned state.

Pennsylvania has a strong interest in clean-up that adequately protects citizens and our constitutionally-protected resources. Furthermore, the Commonwealth views its environmental protection responsibilities with the greatest seriousness; therefore, it has strong policies and laws that provide for tough clean-up. Pennsylvania, under the leadership of Governor Casey, is currently attempting to strengthen its clean-up authority through a variety of means including the adoption of a new state superfund law.

The current federal law allows EPA to negotiate a clean-up under TSCA without providing a clear state role. Although EPA could have provided a state role if it viewed the Texas Eastern problem as a RCRA problem, it chose to view the problem as primarily a TSCA problem thereby creating a process where the states along the pipeline could be excluded. Although a state is not preempted from pressing for more stringent standards where EPA acts on a PCB problem, EPA agreement to settle claims on clean-up of PCBs is not in the public interest because it gives a regulated party the opportunity to argue that one or the other of the government agencies has determined that a less stringent level of clean-up is adequately protective of public health.

B) EPA Should Not Negotiate A Clean-up Of PCB Contamination Without Allowing A State To Participate.

It was unconscionable for EPA to agree to soil clean-up levels of 25, 10, and 5 ppm PCB without allowing the state to participate in the negotiations. Pennsylvania believes that in agreeing to these numbers, EPA relied, in part, on the TSCA spill policy that appeared in the Federal Register at Vol. 52, No. 63 on April 2, 1987. This policy asserts that it will be applied when the 'spill area will be cleaned or contained within one or two days of spill occurrence.' The spill policy does not address spills of chronic exposure. The spill policy states that it does not apply to spills that existed prior to May 4, 1987. The spill policy recognizes that old spills may involve more pervasive contamination than fresh spills and that these will require a site-by-site evaluation. The federal spill policy does not and was not intended to address areas of long term, pervasive groundwater and soil contamination where intensive recurring disposal and discharges have occurred. Therefore, Pennsylvania believes that the spill policy is inapplicable to the Texas Eastern situation.

PA DER believes that in absence of a promulgated standard or policy in order to adequately protect public health from the dangers of PCB contamination, either the responsible party should be required to remove all contamination from the site or if this is not feasible, to a level determined by a site specific risk analysis. PA DER, despite repeated requests to EPA, has not been able to determine how the agreed to clean-up levels were arrived at by EPA. EPA has provided us with certain generalizations with little analysis on the effect of the PCBs left in place on groundwater levels. If risk assessment was the basis of the EPA numbers, Pennsylvania should have been provided the opportunity to understand the policy and technical judgments which EPA used to support its numbers.

Risk assessment methodology necessarily must include many decisions which are not purely scientific but present public policy choices. In risk assessment, public policy choices must be made among assumptions, interpretations and relative weighing among conflicting pieces of information. One important example of this is the level of risk that is deemed acceptable. These policy choices must be understood in order to evaluate a risk assessment. The failure of EPA to disclose how it reached its conclusions on a case in which there are 19 sites in Pennsylvania which are quite variable in contamination and site characteristics represents a major breach of EPA's responsibility to Pennsylvania.

PA DER has hired a contractor to evaluate and make recommendations on clean-up levels for soils at the Pennsylvania sites. EPA's agreement to the clean-up levels for the Pennsylvania sites before the Pennsylvania levels have been developed puts Pennsylvania in a more difficult position than it would have been if EPA had not taken a position on an acceptable clean-up level.

C) It Makes No Sense To Regulate PCBs Differently Than Other Hazardous Substances.

Under TSCA, PCBs are given special treatment. Other hazardous waste substances are regulated under RCRA as a matter of federal law although EPA has always had the option of listing PCBs as a listed waste under RCRA. Without the umbrella of RCRA, PCB regulation, as a matter of federal law, does not provide for an express role for the states. PCBs are not unlike other complex toxic substances regulated under RCRA. Unless PCBs are regulated under RCRA, there are no federal requirements that deal with PCB transportation, manifesting, and closure of PCB disposal site. The failure of EPA to require that PCB wastes follow the tracking and closure procedures of RCRA may be an explanation for both the weakness of the EPA-negotiated Consent Decree and size of the environmental problem created by Texas Eastern.

Pennsylvania is without knowledge of why EPA has handled the Texas Eastern matter so poorly. In February, 1988, the Senate Subcommittee on Superfund and Environmental Oversight published a report entitled CONCERNING THE PERFORMANCE OF THE ENVIRONMENTAL PROTECTION AGENCY IN THE MATTER OF TEXAS EASTERN PIPELINE COMPANY ("The Senate Report"). Although Pennsylvania did not have opportunity to comment on this matter until the report had been published, and although the report did not reflect the true environmental seriousness that the analytical data that has been gathered in Pennsylvania has shown, Pennsylvania agrees with many of the conclusions contained in the Senate Report. In particular, Pennsylvania agrees with those portions of the report that suggest that if there is any explanation for EPA's irresponsible behavior in this matter, it is EPA's insistence on approaching this problem as if it were a TSCA problem, by an

inexperienced TSCA staff. Pennsylvania believes that if PCBs had been regulated under RCRA, some of the mistakes made by EPA would not have been made.

D) **Many Of The Common Assumptions About The Fate And Transport Of PCBs Are Not Supported By The Analytical Data.**

The Senate Report mentioned above asserted that EPA, in its approach to the Texas Eastern matter, seemed to be relying on the theory that there would be no migration of PCBs in the soils. This theory, on the limited mobility of PCBs, is often cited by industry responsible for PCB problems and may be responsible for the misapplication by EPA of the spill policy to this situation. Evidence gathered by PA DER pursuant to its Consent Order with Texas Eastern indicates that PCBs have migrated into the groundwater at 11 of the 19 Pennsylvania sites. If EPA's approach to this problem was premised on the industry canard that PCBs do not migrate, the empirical evidence demonstrates that this is a faulty assumption. Pennsylvania believes that it may turn out that groundwater clean-up costs may be the most costly component of a clean-up because of the long time that may be necessary to treat and monitor clean-up.

E) **There Should Be Strict Limitations On EPA's Ability To Overfile When A State Is Taking Strong Enforcement Action.**

Where a state is taking strong and effective enforcement action under any of its environmental laws, it is not in the public interest for the federal government to overfile against the same defendant. Such an action creates conflict and is wasteful of scarce enforcement resources. In the Texas Eastern matter, EPA has not only overfiled on matters on which the state has been taking enforcement action but has attempted to settle issues which are the subject of ongoing state litigation; for instance, civil penalty matters. EPA purports to be settling these issues "under analogous state law" while refusing to give Pennsylvania a role in the negotiation of these issues. Federal law must be amended to prohibit such irresponsible behavior.

COMMENTS ON THE PROPOSED LEGISLATION

Pennsylvania supports legislation which will create expanded regulation of PCBs. PCBs should be subject to the same manifest and tracking requirements that are prescribed for other hazardous chemicals under RCRA. It is important that PCB clean-ups are subject to the same regulatory requirements relating to closure and post-closure care applicable to other hazardous substances. Pennsylvania views PCB contamination to be a serious environmental problem in Pennsylvania and it, therefore, believes that it makes no sense for PCBs to be treated less stringently than other pollutants. In fact, it can be argued, given the environmental persistence of PCBs and what we know about PCB toxicity, PCBs should, if anything, be treated more stringently rather than less stringently than other hazardous substances.

Pennsylvania believes that RCRA should be amended to expressly include coverage for PCBs. RCRA, rather than TSCA, is the more appropriate statute to deal with the clean-up aspects of PCB contamination because it provides a clearer role for states who are concerned about PCB contamination. RCRA coverage of PCBs would also assure greater consistency in the regulation of PCBs by all levels of government because as the law of hazardous waste continues to develop under RCRA, those developments would automatically be assumed to apply to PCBs. Greater consistency promotes greater understanding; greater understanding promotes enhanced environmental protection. If RCRA is amended to include PCBs as a hazardous waste, future Texas Eastern problems, where EPA acts as though it can settle levels of clean-up without considering state views on the adequacy of clean-up, should be avoided.

Thank you for the opportunity to present our views. I would be glad to answer any questions you may have.

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TESTIMONY

RICHARD C. FORTUNA
EXECUTIVE DIRECTOR
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PROPOSED PCB LEGISLATION

BEFORE

SUBCOMMITTEE ON COMMERCE, TRANSPORTATION AND TOURISM
COMMITTE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES

NOVEMBER 18, 1987

Chairman Baucus, Senator Durenberger, Members of the Committee, I welcome the opportunity to testify before you this morning on the important matter of PCB management and the legislation that is being considered to remedy current regulatory and enforcement deficiencies.

I. BACKGROUND ON THE COUNCIL, STATEMENT OF INTERESTS

The Hazardous Waste Treatment Council is a national association of more than 60 commercial firms that share a common commitment to the primary use of advanced and conventional treatment technologies in the management of hazardous wastes, and to the restricted use of land disposal. The Council is the largest organization representing the interests and concerns of commercial hazardous waste treatment firms, response action contractors and equipment manufacturers. Our member firms operate facilities in 48 states and represent the full spectrum of established and emerging treatment technologies.

The Treatment Council was the lead industry group in developing the 1984 amendments to the Resource Conservation and Recovery Act (RCRA), the nation's basic authority for the management of hazardous wastes. The 1984 RCRA amendments restructure the nation's waste management policies by establishing a program to truly prevent creation of additional "Superfund" sites through statutory restrictions on all forms of land disposal and the closing of regulatory loopholes. The Council was also directly involved in the reauthorization of

CERCLA, specifically the selection of permanent remedy and cost-effectiveness provisions. The Council has continuing involvement in numerous legislative and regulatory activities under RCRA, CERCLA, TSCA and other state and federal statutes affecting proper management of hazardous wastes. We also conduct studies on various aspects of hazardous waste management, and provide technical and management assistance to regulatory agencies and members of the regulated community.

The Council represents several firms that collectively are engaged in the full spectrum of PCB management including incineration, chemical dechlorination, transformer decommissioning, storage, and disposal of treated and low-level PCB residues. We represent more PCB management firm that any other group and share the growing concern in the Congress and elsewhere regarding the inadequacy of the current PCB management regulations. These weaknesses in the existing PCB structure not only have the potential to endanger public health and the environment, but in effect punish responsible operators that have taken the precautions and made the expenditures to insure proper and protective management of PCB's.

II. CURRENT PCB PROBLEMS

Since the issuance of the PCB regulations in 1979, we are familiar with many of the sham PCB operations that have opened their doors and subsequently shifted their liabilities back to their operations. Problems of the SED facility in North Carolina, American Electric in Florida, and Rose Chemical in Missouri are notable situations of PCB problems, which demonstrate deficiencies in the PCB program and its enforcement.

In general, the problems associated with the PCB program fall into two broad categories:

1. those related to deficiencies in the regulations; and,
2. those related to inadequate enforcement and followup.

SED, American Electric and Rose Chemical bring to light several the deficiencies in the current PCB regulations pertaining to manifesting, storage area notification and permitting, and the inclusion of permitting standards for treatment, storage, and disposal facilities (e.g., employee training programs, closure and post-closure, and financial responsibility requirements).

In short, a majority of our current PCB problems are attributable to the fact that facilities have simply accepted PCB wastes into storage for indefinite periods of time without any regulatory requirement for a permit demonstrating financial responsibility or even notifying of their existence. It is these sham, storage, treatment, and disposal facilities that have been the major source of problems in the PCB regulatory program. these are facilities that merely take in waste promising their customers ultimate treatment or disposal and never delivering. Had these facilities been required to first comply with financial responsibility, notification and manifesting requirements, it is unlikely that many of these facilities would have opened their doors.

Even with revised regulations and legislation, nothing eliminates the need for proper enforcement. No matter what the status of the PCB regulations, unless adequate enforcement exists a repetition of the SED or Rose Chemical incidents could occur tomorrow. Tose Chemical was not a secret facility. It was inspected by the EPA several times from 1982 to 1986. The lack of necessary personnel and resources to oversee the TSCA Compliance Monitoring program and to engage in proper enforcement at all levels of the regulatory system, not merely "commercial" facilities, is essential no matter how restrictive the statutory and regulatory scheme.

III. PROPOSED PCB LEGISLATION

The Council supports the intent and provisions of the draft legislation, with the exception of the transfer to RCRA jurisdiction. On balance the bill is a thoughtful, targeted and responsible approach to dealing with those deficiencies of the PCB regulatory and enforcement system.

A. Merits of the Bill

The Council supports the following elements or approaches to the address of current PCB regulatory deficiencies:

- Grandfathers existing facilities with prior PCB approvals from the Agency.
- Requires a five year review of all permits.
- Requires mandatory inspections of all facilities every two years.
- Imposes RCRA standards and requirements in the event the Agency fails to promulgate necessary and appropriate regulations under the toxic substances control act.
- Requires yearly notice of PCB enforcement actions to be published in a Federal Register. We support this requirement not only under TSCA, but believe it should be a mandatory element of the RCRA reauthorization as well.
- Targets The Most Significant Areas

  The legislation specifically targets for redress the most significant deficiencies in the TSCA regulations including:

  Notification,

Identification Number,

Manifesting and Transportation Requirements

Permitting of Storage Facilities, and

Financial Responsibility, Contingency and Closure Plans.

B. Need For Refinement

We recommend the following changes to the legislation to ensure that it addresses the target facilities in the promptest possible manner, and at the same time does not impede ongoing permitted PCB treatment and disposal activities:

- Retain TSCA Jurisdiction

  While there has been much discussion about simply listing PCBs under RCRA as the solution to the PCB problem; this may well create a greater problem than it resolves. This is because PCBs are no longer being produced and the volumes that remain to be treated or disposed of each year continue to decrease. PCBs were uniformly and widely used in electrical equipment across the country and remedies that are necessary, are sufficiently discreet as to obviate the need for whole scale RCRA listing.

- Retain TSCA Permit Process And Avoid RCRA Permit Process

The legislation fails to retain the current permitting mechanisms under TSCA for treatment and disposal facilities which allows for the permitting of mobile treatment equipment on a national basis with regional oversight. The transformer decontamination programs under TSCA have then the most successful treatment program in the nation to date due in large part to the national permitting approach. If such permitting authority for mobile PCB treatment were shifted to RCRA, this program would virtually come to a halt. The mobile treatment permitting process under RCRA as we know it today is the best friend that the status quo ever had. As a practical matter, we are unable to permit mobile treatment equipment under RCRA due to the need for a full scale repermitting every time a treatment unit is moved from one location to the next. In many cases the PCB treatment equipment stays at a site for less than one week. However, with firms treating PCBs at several hundred sites per year such a system would simply not be feasible under RCRA by any stretch of the imagination without substantial revisions to the RCRA permitting regulations.

- Financial Responsibility Requirements

To demonstrate financial responsibility, facilities should be required to meet either the RCRA financial responsibility requirements using one of the standard financial tests, or the Agency may give consideration to using a financial liquid assets tests which might require that the facility have liquid assets at least equal to one and half times (1-1/2) the market cost of incinerating all PCBs that were stored at the site.

- Storage Permits Above Certain Limits

  Any facility that stores more than some specified amount (e.g., 5,000 or 10,000 Kg) of PCBs for more than 180 days, including a facility which only stores PCB that were generated at that facility, must also comply with the permitting storage facility standards and permit procedures.

- Impact On Previously Permitted Facilities

  While the legislation does not require further approval by the Administrator for facilities that have previous disposal or treatment permits under TSCA, it is unclear whether this grandfathering extends to the facility itself that has been permitted or the specific process for which approval has been granted. In other words, approval may have been granted by the Administrator for the actual disposal, although several other activities may be required to prepare the materials for ultimate treatment or disposal. Therefore, the grandfathering should extend to all activities related to the preparation of PCBs for ultimate treatment or disposal including such storage provided the facility has been permitted by the Administrator for the treatment or disposal of PCBs.

IV. CONCLUSION AND RECOMMENDATIONS

There are several significant and generally recognized deficiencies in the current PCB regulations that allow the establishment and operation of storage facilities that contain potentially unlimited volumes of PCB waste materials. It is this single deficiency that is the most significant problem under TSCA, and which has been compounded by the lack of enforcement followup.

Our first preference is for the Agency to take the recommendation of the PCB Consensus Group and issue a regulatory amendment to 40 C.F.R. Part 761 at the earliest possible date; particularly, the requirement for notification to identify all PCB storage, treatment, and disposal facilities. EPA staff has indicated to us that they believe they can accomplish this rulemaking in a timely manner. At the same time, we can understand why Congress in general will not sit by for another two years to await promulgation of EPA regulations. We, too, are concerned that these deficiencies, if not remedied will contribute to another "Rose Chemical," and further undermine the competitive postures of PCB management. We hope that this legislation serves as a stimulant to EPA to more rapidly develop the necessary notification, storage facility permitting, and related requirements at the earliest possible date thereby forestalling the need for this legislation.

Thank you for the opportunity to present this testimony and on behalf of the Hazardous Waste Treatment Council I look forward to answering any questions you may have and working with the Committee on this bill.

CMA
CHEMICAL
MANUFACTURERS
ASSOCIATION

STATEMENT

OF
DR. JOHN CRADDOCK
CHAIRMAN OF THE PCB PANEL
OF THE
CHEMICAL MANUFACTURERS ASSOCIATION

BEFORE THE
SENATE SUBCOMMITTEE ON
HAZARDOUS WASTES & TOXIC SUBSTANCES
OF THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

REGARDING
S. 2693

AUGUST 11, 1988

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STATEMENT OF DR. JOHN CRADDOCK
CHAIRMAN OF THE PCB PANEL OF THE CHEMICAL MANUFACTURERS ASSOCIATION

ON S. 2693

Before the Subcommittee on Hazardous
Wastes & Toxic Substances
of the Committee on Environment and
Public Works

August 11, 1988

INTRODUCTION

My name is John Craddock, and I am testifying today on behalf of the Chemical Manufacturers Association (CMA). CMA is a non-profit trade association whose member companies represent about 90 percent of the nation's productive capacity for basic industrial chemicals. CMA appreciates the opportunity to appear before the Subcommittee this morning.

As a member of the Polychlorinated Biphenyls (PCB) Consensus Group, the CMA PCB Panel has worked closely with EPA for a decade to develop sound regulations under the Toxic Substances Control Act (TSCA) for activities involving PCBs. The Consensus Group, whose members also include representatives of the Environmental Defense Fund, Natural Resources Defense Council, the National Electrical Manufacturers Association (NEMA) and the Utility Solid Waste Activities Group (USWAG), has worked diligently to ensure that the TSCA PCB regulations provide a sound framework through which the 1976 Congressional goal of controlled use and disposal of PCBs is realized.

Along with other members of an expanded PCB coalition that includes the environmental groups, USWAG, NEMA, the

Association of American Railroads, and the Hazardous Waste Treatment Council, we have over the past two years been addressing a variety of PCB disposal issues. In August 1987 the PCB coalition proposed to EPA specific regulatory language to strengthen the TSCA disposal rules in the areas of manifesting, intermediate activity and storage permitting, and financial responsibility -- the same substantive areas that are addressed in S. 2693. We have submitted for the record documents which outline the history of our involvement with this issue.

We are here today to support Sections 1 and 2 of S. 2693 which parallel H.R. 3070 that has already passed the House. We oppose, however, Sections 3 and 4 of S. 2693, which would apparently require EPA to shift regulation of PCB disposal to the Resource Conservation and Recovery Act (RCRA). Our work on this issue has convinced us that the TSCA regulatory framework, combined with the improvements in H.R. 3070 and Sections 1 and 2 of S. 2693, will adequately address these issues.

BACKGROUND OF THE PCB DISPOSAL ISSUES

Because a sound framework is established in the existing PCB TSCA disposal rules, we believe the vast majority of all PCB-containing wastes in this country are currently being handled responsibly and safely. The rules have been in effect for nearly a decade and have become well-understood by the regulated community. Compliance with the rules is the norm. The stability of the rules has encouraged investment in technologies that encourage and accelerate safe disposal.

Although there have been incidences of improper PCB disposal -- some of them well-publicized -- we do not believe the cause of such incidents was an inadequate regulatory framework. In each of those instances, existing rules were being violated, EPA was aware of the violations, and the fault, if fault is to be found, is that enforcement was not swift and comprehensive.

We agree with the concerns expressed by the sponsors of S. 2693 that some changes in the TSCA PCB disposal rules would be appropriate to ensure that sound management practices currently used for most PCB disposal activities are followed universally and enforcement can be more swift.

The proposal of the PCB coalition to EPA to amend the TSCA PCB rule in August 1987 is reflected in all three of the specific substantive issues addressed in Sections 1 and 2 of S. 2693.

First, manifesting of PCB wastes between generators and disposal would be required. Most PCB disposal is currently manifested, often on a voluntary basis. A requirement to that effect seems reasonable to ensure all such wastes are tracked.

Second, permitting of intermediate activities would be required. Permits are now required under TSCA for persons involved in treatment or disposal of PCBs. Extending such requirements to others involved in the disposal system, particularly those who store other persons' PCB wastes on their way to disposal, seems appropriate.

Third, financial responsibility would be required in any TSCA PCB treatment, intermediate activity, or disposal permit. EPA has been imposing such requirements in permits for PCB disposal activities. Ensuring that such requirements are uniformly imposed seems appropriate.

In proposing amendments to the TSCA disposal rules, the PCB coalition recognized that there were a number of detailed questions needing resolution in order to ensure meaningful regulations. For example, there is a need to determine: at what point in the disposal chain the manifesting requirements begin; exactly which activities should be permitted; and what types of financial responsibility requirements make sense for each type of activity. EPA, too, recognized the need to look closely at these and other issues in its September 18, 1987, response to the PCB coalition. In August 1987, we encouraged the Agency to work expeditiously to adopt such changes under TSCA. We welcome the Agency's Federal Register announcement that such rulemakings will soon be issued. We believe that since EPA is already working on these issues, EPA can meet the deadlines in Sections 1 and 2 of S. 2693.

THE UNDESIRABILITY OF REGULATING PCB WASTE UNDER RCRA

We further believe it is important that changes in PCB rules be implemented through TSCA rather than through transferring PCB disposal regulation to RCRA, as Sections 3 and 4 of S. 2693 contemplate. Sections 3 and 4 do far more than give states authority to enforce PCB regulations as written. It appears that Sections 3 and 4 would make PCBs a hazardous waste and thus subject PCBs to the panoply of RCRA management requirements. As EPA found when it was reviewing the possibility of moving PCB disposal to RCRA, the TSCA framework was specifically adopted to handle the unique features of PCB disposal; much would be lost if the current workable framework were eliminated.

PCBs, unlike other materials currently regulated under RCRA, are unique in that their manufacture has been banned. The basic issue to be addressed for PCBs is thus not how to manage a stream of continuously generated hazardous waste, but rather how to expedite final disposal of a chemical no longer commercially produced. Since the amount of PCBs to be disposed of is continually declining, new or modified controls on PCB disposal should be structured to expedite rather than impede disposal in an environmentally sound manner.

Industry has spent ten years developing the technology and systems needed to implement TSCA regulations designed to eliminate PCBs from the environment. Industry has worked with EPA, the states, and environmental groups to hammer out the details of the TSCA disposal rules, and by now these rules are broadly and well understood. One of the most important developments under TSCA has been the permitting of various alternative destruction methods. TSCA has the flexibility to assure close review and control of many types of facilities. Mobile facilities, for example, have been instrumental in expediting the elimination of PCBs from the environment. This process literally could come to a halt if PCBs were to be defined under RCRA as a hazardous waste.

This is not to say that the RCRA program is irrelevant to PCB disposal. In fact, a number of elements from the RCRA regulatory scheme already have been adopted for use in the TSCA program and some states already regulate PCB waste under their RCRA programs. In recent years, for example, EPA has customarily required RCRA-type financial responsibility and closure planning in TSCA permits issued to PCB treatment and disposal facilities.

It is important to recall that TSCA has worked at least as effectively for PCBs as RCRA has for other materials. At the same time, the TSCA program takes into account the unique nature of PCB disposal and reflects the determination of Congress in 1976 to single out PCBs for comprehensive regulation under TSCA. Some gaps in the TSCA scheme, real or perceived, have emerged in recent years; but each can be accommodated within the TSCA framework. Most important, such accommodation will be achieved much faster through targeted revisions of the TSCA rules, than through a wholesale shift of the PCB rules into the RCRA rules. It could take EPA two to three years, perhaps even longer, to assure that the transfer of PCB disposal regulation into RCRA retains the most effective aspects of each program. It is not clear that the necessary amendments to RCRA regulations could be accomplished in time to address the expected peak demand for PCB waste disposal, which is expected to occur during the next several years. A transfer of PCB regulations to the RCRA program would be very complex and disruptive to the ongoing PCB waste disposal process.

CONCLUSION

CMA urges the Subcommittee to approve Sections 1 and 2 of S. 2693, but delete Sections 3 and 4. CMA believes that any important deficiencies in the regulation of PCB wastes can be remedied more expeditiously within the existing TSCA framework with the addition of language contained in Sections 1 and 2 of S. 2693. Continued attempts to shift the PCB disposal businesses of this country into an entirely different regulatory system are destined to cause confusion. This will slow the country's progress toward complete and safe elimination of PCB risks.

Thank you again, Mr. Chairman. We look forward to working with you and other members of the Subcommittee on this very important issue.

August 19, 1987

BY HAND

The Honorable Mike Synar
Chairman, Subcommittee on
Environment, Energy and
Natural Resources
Committee on Government Operations
U.S. House of Representatives
Rayburn House Office Bldg., Rm. 2441
Independence Avenue, S.W.
Washington, D.C. 20515

Dear Congressman Synar:

The undersigned coalition of representatives from industry and environmental organizations, the PCB Consensus Group, shares with you the goal of expediting disposal of polychlorinated biphenyls (PCBs) in an environmentally sound manner. We have been considering amendments to the PCB disposal regulations under the Toxic Substances Control Act (TSCA) (40 C.F.R. § 761.60) that would require that PCB-containing wastes be accompanied by manifests when transported for disposal, that intermediate disposal activities be permitted, and that relevant financial responsibility requirements would apply to treatment, disposal and intermediate activities. These are the same areas as are addressed in the legislation you recently introduced.

As you know, our Consensus Group has been meeting with the Environmental Protection Agency (EPA) over the past nine months to discuss amendment of the existing TSCA disposal regulations. In order to assist the Agency in accomplishing that goal, we transmitted to Office of Toxic Substances Director Charles L. Elkins last week specific regulatory language that we have developed. We enclose for your information our letter to Mr. Elkins and the proposed amendments. Although our proposed regulatory language addresses the same issues as does your legislation, there are some differences in approach.

We believe that the Agency can propose and issue amended PCB disposal regulations quite expeditiously. This is especially true given the broad consensus, both among ourselves and in Congress, as to the areas to be addressed in amended TSCA disposal rules. We hope to work with EPA in accomplishing that task. We would be happy to meet with you to coordinate this issue.

Respectfully yours,

Jacqueline M. Warren/s
Jacqueline M. Warren
on behalf of the Natural
Resources Defense Council

Toni K. Allen/s
Toni K. Allen
on behalf of the Utility
Solid Waste Activities
Group

Richard C. Fortuna/s
Richard C. Fortuna
on behalf of the
Hazardous Waste Treatment
Council

Steven S. Rosenthal/s
Steven S. Rosenthal
on behalf of the National
Electrical Manufacturers
Association

Timothy F. Burns/s
Timothy F. Burns
on behalf of the Chemical
Manufacturers Association

J. Thomas Tidd/s
J. Thomas Tidd
on behalf of the
Association of American
Railroads

Enclosures

cc w/encs.:	Lee M. Thomas Dr. John A. Moore Charles L. Elkins Marcia Williams
bcc w/ encs.:	Martin P. Halper James Lounsbury Rick Young Matt Fletcher Brenda Pulley

Testimony of
STEVEN S. ROSENTHAL
for the
NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION

on S. 2693

Before the
SENATE SUBCOMMITTEE ON HAZARDOUS WASTES
AND TOXIC SUBSTANCES
OF THE COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

August 11, 1988

My name is Steven Rosenthal, and I am testifying today on behalf of the National Electrical Manufacturers Association ("NEMA"). NEMA is the principal national trade association of the electrical manufacturing industry, representing approximately 560 member companies. NEMA members formerly manufactured PCB transformers and capacitors and continue to service PCB and PCB-contaminated transformers in their service shops. NEMA members, along with companies in other industries, continue to own and use PCB and PCB-contaminated transformers in their manufacturing operations. NEMA appreciates the opportunity to appear here this morning to present its views on S. 2693.

NEMA has actively participated in a coalition of industry and environmental organizations, including the Chemical Manufacturers Association ("CMA"), the Environmental Defense Fund, Natural Resources Defense Council, Utility Solid Waste Activities Group, the Association of American Railroads, and the Hazardous Waste Treatment Council, which has worked closely with the EPA for over three years to develop sound regulations under the Toxic Substances Control Act ("TSCA") to govern activities involving PCBs. NEMA substantially agrees with the testimony of the CMA and EEI representatives. We support section 2 of S. 2693, which is virtually identical to H.R. 3070 that has already been passed by the House. NEMA opposes section 3, however, which appears to shift regulation of PCBs from TSCA to the Resource Conservation and Recovery Act ("RCRA").

Other coalition members testifying today have explained why we support the reforms called for by H.R. 3070, which in large part codifies amendments to the TSCA PCB regulations that the coalition developed through joint negotiations with EPA last year. Those amendments to TSCA will help ensure that sound management practices for PCB disposal are universally employed and enforced. Rather than repeat their testimony, I will devote my time to explaining why NEMA opposes transfer of PCB regulation to RCRA.

NEMA believes that the few regrettable instances of improper handling of PCBs have been largely the result of inadequate enforcement of existing rules, not structural flaws in the TSCA regulations themselves, and we empathize with the sponsor's desire to tighten the reigns of enforcement. NEMA strongly disagrees, however, that transferring and later reshaping PCB regulation to meet RCRA standards will accomplish that goal. To the contrary, changing regulatory horses in the middle of the stream would have disastrous effects on PCB enforcement efforts.

As Senator Baucus correctly points out in introducing S. 2693, we are approaching a period in which large amounts of PCBs must be taken from service, transported to disposal sites and destroyed. Now is not the time to restructure the regulations governing disposal of that material. Substantially altering PCB regulations which the industry has worked with and helped to develop over the past ten years would create confusion and uncertainty about regulatory compliance that can only impede the disposal process at a time when the industry should be concentrating its energies on meeting the regulatory deadlines for removing electrical equipment containing PCBs from service.

Despite criticism that it has been slow to identify facilities actually using PCBs, EPA enforcement of TSCA regulations governing disposal of PCBs has been vigorous and is improving. A GAO report to the House Subcommittee on Environment, Energy and Natural Resources released in April of this year recommended that no action be taken because the EPA itself had implemented several initiatives to improve its PCB enforcement program.

The EPA inspects an average of 2,355 facilities each year for compliance with PCB regulations under TSCA. In fiscal 1987, for example, the EPA regional offices surpassed the targeted number of TSCA inspections they were projected to complete, brought 445 civil administrative complaints against PCB violators, and levied fines in excess of $1.18 million. EPA statistics show that the number of PCB enforcement actions, which were running a close second to asbestos cases in 1987, has increased dramatically in the first quarter of 1988. Of the 167 complaints brought under TSCA in the first three months of this year, 99 were for PCB violations, while 61 were for asbestos charges.

NEMA is not here to defend the EPA's enforcement record. If Congress feels that additional resources are needed to augment EPA enforcement of existing TSCA regulations, then NEMA is eager to work with Congress as it has in the past to ensure that EPA has adequate tools to administer and enforce the existing TSCA regulations. But fundamental changes to those programs are not only unnecessary, they would likely reduce the level of compliance and effective enforcement of PCB regulations.

We also think that there is a substantial question whether transfer of PCB regulation to RCRA will improve enforcement. Yet another GAO report issued in June of 1988 demonstrates that joint state and federal enforcement of RCRA has been inadequate, at least in part, precisely because enforcement responsibility is divided between state and federal enforcement agencies. The report criticized EPA's failure to directly pursue violators when state enforcement proved inadequate. EPA regional officials, the report noted, "have been reluctant to take direct enforcement actions in authorized states primarily because . . . they do not want to damage established working relationships with the states." The report also questioned the deterrence value of the enforcement actions that were brought because there was no assurance that the penalties levied were sufficient to outweigh the economic benefits of noncompliance.

Transferring PCB regulation to RCRA will not solve the EPA's enforcement difficulties. At best, Congress would be trading one set of problems for another, or even worse, it may actually compound the obstacles facing the EPA and the companies who ultimately must comply with the new regulations. In short, NEMA agrees with EPA's and the House's determination, contained in the Committee report on H.R. 3070, that "a transfer of PCB regulation to the RCRA program would be very complex and too disruptive to the ongoing PCB waste disposal process."

The goal of the EPA and of this subcommittee should be to increase compliance with the regulations. Maximum compliance will be achieved by retaining the existing regulatory structure. Optimal enforcement can be reached most easily by targeting revisions to the TSCA framework. H.R. 3070 does exactly that, and we urge this committee to approve section 2 of S. 2693.

NEMA supports providing the necessary funds and tools to the EPA to improve TSCA enforcement, but we strongly urge this subcommittee not to abandon the regulations that have been developed over the last decade. Thrusting the PCB disposal business into an entirely different regulatory regime can only cause turmoil and confusion which ultimately will impede the effort to phase out the use of PCBs.

United States General Accounting Office

GAO

Report to the Chairman, Subcommittee on Environment, Energy, and Natural Resources, Committee on Government Operations, House of Representatives

April 1988

TOXIC SUBSTANCES

EPA Has Made Limited Progress in Identifying PCB Users

GAO/RCED-88-127

notification regulation. According to EPA, the administrative burden on EPA and such users did not justify tracking a very few articles of PCB waste and the costs of submitting and processing the data would far outweigh EPA's use of such data.

As in EPA's hazardous waste program, the PCB facilities will be assigned identification numbers, which will be used for tracking purposes. EPA plans to issue the proposed notification rule by April 30, 1988, and a final rule in July 1988 under an accelerated rulemaking process. EPA expects the manifesting portion of the rulemaking to take longer to issue. If EPA receives substantial negative comments on the notification portion of the proposed rule, additional time to address these comments will be necessary. If this occurs, EPA plans to issue the combined notification and manifesting rule by December 31, 1988.

Third, EPA has recently requested and received the 1986 records of the three major PCB incinerators to identify users and handlers who used these facilities. As EPA collects all of the above-mentioned information, it plans to disseminate it to the regional offices to improve their targeting of facilities for PCB inspections.

The last initiative is what EPA terms an exposure-based strategy. EPA has contracted for a study to identify the types of PCB facilities that present the greatest human and environmental risks for better targeting of the types of industries to inspect. EPA's goal is to develop a strategy that concentrates inspection resources in the most important areas. According to the Chief of EPA's Chemical Regulation Branch, the study was initiated because some regions were inspecting facilities that were not likely to result in much exposure, rather than PCB disposal or handling companies, for example, which potentially pose a much greater risk. EPA's completion date for the study is June 1988. However, EPA needs more information and does not expect to meet that date. It has not yet established a revised completion date. EPA expects to modify its risk-based strategy once it receives information on PCB users under its notification requirement.

Conclusions

EPA has made limited progress in identifying PCB facilities since the Congress banned PCBs 10 years ago. EPA has been developing lists of potential PCB facilities and has revised its strategy for targeting inspections. However, because the lists are limited and often outdated, EPA still does not know which facilities have PCBs. As a result, EPA has continued to inspect non-PCB facilities, while facilities with PCBs have gone without inspection. Although EPA will always have to inspect some facilities that may not have PCBs to determine compliance with the notification requirement and other PCB equipment bans, it should be part of a planned strategy. With a recent average of 2,355 inspections each year to cover a potential universe of 700,000 to 750,000 PCB facilities, EPA must accurately target its PCB inspections to provide an effective deterrent to noncompliance with the PCB regulations.

To improve its PCB inspection program, EPA has several initiatives under way. EPA is focusing its inspection efforts on PCB disposers and handlers, the facilities involved with large amounts of PCBs. In addition, EPA has acted to provide additional information on the large PCB users as well as smaller users who have sent PCBs to incineration or used alternate destruction methods. EPA is also working on a risk-based strategy to better target PCB inspections and plans to provide all the above-mentioned information to the regional offices as it is developed.

We are not making any recommendations at this time because we believe that the various EPA initiatives are a step in the right direction. EPA's efforts should provide much-needed additional and current information on PCB users. However, whether they will provide adequate information on PCB users and, therefore, the most effective use of EPA's inspection resources remains to be seen.

Our work was performed between May 1987 and March 1988. We interviewed officials and collected information at EPA headquarters and in regions III (Philadelphia), IV (Atlanta), V (Chicago), and VI (Dallas), which were selected for their geographic distribution.

In order to describe EPA's efforts to identify and select facilities for PCB inspections, we interviewed EPA officials responsible for the PCB program at headquarters and in the four regions and reviewed various headquarters and regional listings of potential PCB facilities. We reviewed PCB inspection files and reports for non-PCB inspections in fiscal years 1986 or 1987, as available. We also reviewed headquarters- and region-developed inspection strategies; general PCB program information, such as resource and inspection data; and documents on EPA program initiatives that related to identification and selection of PCB facilities.

The views of directly responsible officials were sought during the course of our work and are incorporated where appropriate. As requested, we did not obtain official agency comments on a draft of this report.

United States General Accounting Office

GAO

Report to Congressional Requesters

June 1988

HAZARDOUS WASTE

Many Enforcement Actions Do Not Meet EPA Standards

formal enforcement orders and penalties against 24 high-priority financial responsibility violators we reviewed. EPA region II enforcement officials were aware of New Jersey's lack of enforcement action, but did not intervene in any of these cases because they thought the state was making reasonable progress in taking the appropriate action. However, in December 1987, about 6 months after the close of our fieldwork, EPA region II began taking action on some of the New Jersey cases.

Table 3.2: Number of Inappropriate State Enforcement Actions Against High-Priority Violators and Class I Violators

	Total inappropriate actions		Actions with no extenuating circumstances	
	HPV	**Class I**	**HPV**	**Class I**
Region II states	36	29	36	28
Region V states	74	4	15	4
Region VI states	13	16	8	11
Total	**123**	**49**	**59**	**43**

Reasons for EPA Regions' Lack of Action

We asked EPA regional enforcement officials why the regions had not been more aggressive in taking enforcement actions when the states failed to take enforcement actions as prescribed in the Enforcement Response Policy. According to the regional officials, they have been reluctant to take direct enforcement action in authorized states primarily because (1) they do not want to damage established working relationships with the states, and states normally prefer to handle their own enforcement actions without federal interference; (2) they lack enforcement resources or they have other priorities that preclude them from taking such actions; and/or (3) they believe the states are making reasonable progress in taking an enforcement action—even though the timelines in the enforcement policy have been exceeded—and that EPA's added involvement would not speed up the process.

EPA Headquarters Has Noted Lack of Regional Intervention

EPA headquarters conducts periodic evaluations of regional performance in overseeing state RCRA programs about every 18 months. These evaluations are called regional program reviews and are performed at the regional offices by headquarters EPA staff. In the program reviews conducted between September 1986 and May 1987 for the three regions we visited, headquarters noted that the states were having difficulty meeting the timely and appropriate criteria and the EPA regions were not taking direct enforcement actions when states failed to follow the enforcement policy.

TESTIMONY OF THOMAS E. SIEDHOFF
on behalf of
the Edison Electric Institute,
the National Rural Electric Cooperative Association,
and the American Public Power Association
Before the
Senate Committee on
Environment and Public Works
August 11, 1988

My name is Tom Siedhoff, and I am Manager of Environmental Services for Union Electric Company in St. Louis, Missouri.1/ I also have chaired a task force addressing certain polychlorinated biphenyl (PCB) disposal issues within the Utility Solid Waste Activities Group (USWAG).2/ Specifically, the task force addressed issues arising from EPA's

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1/ Union Electric Company is a medium-sized electric utility company based in St. Louis, Missouri, serving the eastern half of Missouri and a small portion of Illinois and Iowa.

2/ USWAG is an informal consortium of the Edison Electric Institute (EEI), the American Public Power Association (APPA), the National Rural Electric Cooperative Association (NRECA),

[Footnote continued on following page]

earlier consideration of the possible transfer of the disposal program for PCBs from the Toxic Substances Control Act (TSCA) to the Resource Conservation and Recovery Act (RCRA). I am appearing this morning on behalf of the Edison Electric Institute, the National Rural Electric Cooperative Association and the American Public Power Association. I appreciate the opportunity to address the Committee on this important matter.

As I will discuss in greater detail, the utility industry supports section 2 of S. 2693, introduced last Friday by Senator Baucus. These provisions parallel H.R. 3070, which passed the House in June. We strongly oppose the remainder of S. 2693, however, which appears to transfer all authority over PCB waste management from TSCA to RCRA. Such a step is not only environmentally and legally unnecessary; it could actually be environmentally counterproductive.

2/ [Footnote continued]

and approximately 75 electric utility operating companies. EEI is the association of investor-owned electric utility companies. APPA is the national association of publicly-owned electric utilities. NRECA is the national association of rural electric cooperatives. Together, USWAG members represent more than 85 percent of the total electric generating capacity of the United States, and service more than 95 percent of the nation's comsumers of electricity.

I. BACKGROUND

The explicit regulation of PCBs began at the Federal level with the passage of Section 6(e) of TSCA in 1976. The first regulations implementing that provision were adopted by EPA nearly 10 years ago; they addressed various marking (labeling) and disposal requirements. Since that time, there has been a long series of major rulemakings affecting the use, manufacture and distribution in commerce of PCBs. Several of these rulemakings followed judicial challenges to earlier rules, brought either by industry or various environmental groups.

More recently, a consensus group, composed of industry and environmental associations, has worked closely with each other, and with EPA, in an attempt to develop reasonable and workable PCB corrective action requirements that would be protective of human health and the environment. While the ultimate cleanup requirements implemented by EPA last year (May 1987) did not reflect all of the consensus group's proposals, the process showed that a less formal approach to solving complicated technical environmental problems was possible.

The result of these efforts over the past decade is that a comprehensive regulatory program for the marking, use, storage, cleanup and disposal of PCBs is in place. The program is well understood by the regulated community, and overall it is working very well.

To be sure, dramatic, yet relatively isolated, incidents have occurred over the past few years that have prompted further discussions both in Congress and elsewhere on the question of whether the TSCA regulatory program is adequate, particularly regarding disposal. This discussion first led to consideration of the possibility that the PCB disposal program might be transferred from TSCA to RCRA. As chairman of the USWAG task force responsible for this issue, I participated actively in discussions on this subject last year with a broad-based coalition of industry and environmental groups and with EPA. The general conclusion reached was that such a transfer would create very serious problems, given the differences between the two regulatory schemes, and would do so without providing any real benefit to health or the environment. It also was clear to our group that there already is adequate statutory authority for EPA, acting under TSCA, to close any perceived regulatory gaps.

II. H.R. 3070

Following these discussions regarding the possible transfer of PCBs to RCRA, Representative Synar and several of his colleagues introduced H.R. 3070 last July. The bill as introduced addressed the principal areas of concern that had been discussed by the industry/environmental coalition: (1) manifesting of PCB material sent for disposal; (2) identification and possible permitting of intermediary entities -- the so-called brokers or others who engage in a variety of activities before ultimate disposal of the materials; (3) assurances of financial responsibility for entities engaged in various aspects of disposal; and (4) permitting of disposal facilities on a more standardized basis than is now contained in the PCB regulations. As an employee of a generator of PCB waste material, I can assure you that my company is concerned about downstream handling -- or should I say possible mishandling -- of PCBs; although small, Union Electric is a Potentially Responsible Party under Superfund at the Rose Chemical site.

From the PCB waste generator's perspective of the electric utility industry, we recognized that the areas covered by H.R. 3070 could provide additional safeguards designed to minimize some of the perceived problems and the liabilities which have arisen for us over the last few years. We also recognized that EPA had ample existing authority under TSCA to address by regulation the areas covered by H.R. 3070. We therefore joined with other members of the industry/ environmental coalition last August in submitting proposed regulatory language to EPA which would remedy the perceived deficiencies in the PCB program, namely, an absence of explicit requirements over manifesting, commercial storage and other intermediate activities involving PCB wastes; and training, closure and financial responsibility at PCB treatment and disposal facilities.

While the utility industry continues to believe that these areas can be addressed as well by regulation as by statute, we, along with other coalition group members, have worked closely with House staff in the year since introduction of H.R. 3070 to refine the bill to achieve its intended purposes. As passed on June 13, this legislation would mandate the promulgation by EPA of a wide range of regulations, to considerably strengthen the existing PCB program. In the event regulations are not issued within relatively short, specified deadlines, the bill contains "hammers" which would impose analogous RCRA rules pending issuance of new TSCA rules. Although H.R. 3070 does not completely satisfy either industry or environmental groups, the bill does represent a compromise which we believe will be both effective and workable. We therefore support both H.R. 3070 and the portion of S. 2693 (section 2) which parallels H.R. 3070.

III. S. 2693

We are extremely disturbed, however, by the balance of S. 2693. Our principal objection is to the apparent goal of sections 3 and 4: to transfer jurisdiction over PCB waste management from TSCA to RCRA.

Senator Baucus' statement in introducing S. 2693 made several references to liabilities which electric utility companies have incurred under Superfund -- at the Rose Chemical site in Missouri, for example -- despite their compliance with the TSCA PCB waste disposal rules. As I mentioned earlier, my company is one of the PRPs at Rose Chemical, and we believe that the bill would not assist us. Specifically, section 2 of the bill would fill the perceived substantive gaps in the current TSCA program; these revisions might help to protect us when we send PCB waste to disposal sites in the future, either by minimizing the likelihood that these sites will become contaminated or, if they do, by ensuring that the site owners and operators are financially capable of performing any necessary cleanup. Sections 3 and 4 of the bill, however, would only impose requirements which, as I will outline shortly, could impede, rather than facilitate, the orderly and safe disposal of PCB waste, or would merely duplicate existing TSCA authority. For these and a variety of other reasons, the utilities and other affected groups have rejected transferring PCBs to RCRA in the past, and we continue to oppose this idea today.

Why PCB Waste Management Should Remain Under TSCA

The argument has been made that PCB waste is no different from the chemical wastes regulated under RCRA, and thus PCBs should be regulated under RCRA, too.

The fact is, however, that PCB waste is different, because of the manner in which Congress has chosen to regulate it. In 1976, 10 days before the passage of RCRA, Congress determined that only one chemical waste should be singled out for regulation under TSCA: PCBs. As the House recently recognized in passing H.R. 3070, because Congress elected in TSCA to ban the manufacture of PCBs, the fundamental issue to be addressed for PCBs is not how to manage a stream of continuously generated waste (the RCRA question), but rather how to expedite the disposal of a finite amount of chemical no longer produced, as quickly as safely and practically possible. Moving PCB waste management under RCRA at this point would defeat this purpose, for several reasons.

A. Preemption and State Enforcement

The principal issue which has been raised in introducing S. 2693 is the purported need for a broader role for states in regulating PCB waste. Senator Baucus stated, for example, that "[t]he fundamental question of staff resources can only be addressed through a sharing of responsibility with the states. RCRA recognizes this shared responsibility. It makes little or no sense for all other hazardous waste to be handled through a shared Federal/State partnership and PCBs to be regulated as a Federal Program."

PCB waste management does require a different approach from RCRA, however, in terms of which entities should be responsible for creating the substantive requirements. As Congress recognized in enacting TSCA, a shifting pattern of potentially hundreds of varying or conflicting state and local ordinances over PCBs could thwart the effectiveness of Congress' scheme for eliminating PCBs: establishing one uniform, national set of rules based on a comprehensive understanding of the problems. Even under this national scheme, though, under TSCA section 18, states can effectively enforce the federal PCB standards (by enacting and enforcing identical state requirements) or can enact more stringent standards (as long as they demonstrate to EPA that such requirements would provide significantly greater protection).

Time has only strengthened the need for federal leadership in the PCB area. Because of upcoming federal phaseout deadlines for PCB electrical equipment, a significant amount of PCB materials will be entering the waste stream. Changing the rules at this point -- when they are finally in place, understood, and complied with by the vast majority of entities -- is only likely to increase potential risk to the public. At the least, it would needlessly complicate and confuse the PCB disposal process. S. 2693 would allow such massive changes, however. Furthermore, as a result of current TSCA policies, many PCB equipment users are voluntarily removing and disposing of PCBs ahead of EPA's deadlines. Allowing additional or conflicting requirements on PCB disposal will substantially reduce this incentive, which would be environmentally counterproductive.

Another key purpose of S. 2693 appears to be to enable states to enforce PCB waste management requirements -- whether they are state or federal regulations. New legislation is unnecessary, though, because TSCA already effectively authorizes states and localities to enforce the federal PCB rules. As I mentioned earlier, TSCA section 18 merely calls for a state to adopt rules identical to the federal rules; it then can enforce the substantively identical rules. In addition, states can -- and many have -- entered into cooperative agreements with EPA to perform the TSCA compliance inspections within their jurisdictions. No new legislation is needed to continue this practice.

Accordingly, the enforcement problems which have been cited as the types of situations to be rectified by S. 2693 do not, in fact, need new statutory solutions. Under TSCA as it exists today, the states involved with the Texas Eastern and Rose Chemical cases, for example, could either have enforced state equivalents of the federal PCB rules or could have enacted more stringent state requirements with EPA approval. Thus, moving the entire PCB program under RCRA simply to achieve greater state participation is unnecessary. In any event, these incidents do not demonstrate any fundamental flaws in TSCA. Rather, as Senator Baucus noted in introducing S.2693, they involved a lack of adequate enforcement resources.

B. Corrective Action

Moving PCBs to RCRA also could slow down the removal of PCBs from the environment. Under TSCA, for example, PCB mobile treatment or retrofilling units now receive national or regional approvals from EPA. An EPA permit for each specific location would be required under RCRA, however. Transfer of PCBs to RCRA also would create a disincentive to use of such units because it would trigger RCRA section 3004(u) "facility-wide" investigation and cleanup responsibilities at the location where equipment or spill debris is being treated. This could literally bring voluntary retrofilling to a halt.

Another unresolved corrective action issue for PCBs under RCRA would be the impact of the transfer on EPA's PCB Spill Cleanup Policy. By defining PCB spills as "illegal disposal" under TSCA, EPA compels spill cleanup (contrary to the understanding reflected in the introductory statement to S. 2693); the particular cleanup requirements are contained in the Agency's 1987 PCB Spill Cleanup Policy Rule. How transfer to RCRA would modify this Policy -- developed over several years of technical discussions with affected groups -- is quite uncertain, however.

C. Other Problems with RCRA Approach

Finally, moving PCBs to RCRA also would raise problems such as whether to list PCBs by concentration (and if so, at what level) or by manufacturing source; how to address the lack of EPA and State resources to permit thousands of over-90-day storage facilities; and where to establish the point of "generation" for PCB wastes.

In sum, there is simply no demonstrated environmental need for the wholesale transfer of PCBs to RCRA, as S. 2693 would require. The discrete types of requirements from the RCRA program which are deemed necessary for PCBs already would be added by section 2 of S. 2693. The remainder of the bill would only impose requirements which either are redundant of TSCA, or are inappropriate for PCB waste. We therefore support enactment of section 2 of the bill, but oppose enactment of sections 3 and 4.

We appreciate the opportunity to present our view today; I will be happy to answer any questions.

100TH CONGRESS
2D SESSION

S. 2693

Entitled the "PCB Control Act of 1988".

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 1988

Mr. BAUCUS introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

Entitled the "PCB Control Act of 1988".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "PCB Control Act of 1988".

SEC. 2. ADDITIONAL REQUIREMENTS FOR PCBS UNDER TOXIC SUBSTANCES CONTROL ACT.

Section 6(e) of the Toxic Substances Control Act (15 U.S.C. 2605(e)) is amended by adding after paragraph 5) the following new paragraphs:

"(6) NOTIFICATION AND IDENTIFICATION NUMBER REQUIREMENT.—

"(A) GENERAL REQUIREMENT.—Beginning one hundred twenty days after the date of the enactment of this paragraph, a person may not—

"(i) by contract, agreement, or otherwise arrange for transport, storage, or disposal of polychlorinated biphenyl waste generated by such person;

"(ii) transport polychlorinated biphenyl waste for storage or disposal; or

"(iii) store or dispose of polychlorinated biphenyl waste; unless the person submits a notification to the Administrator and receives an identification number from the Administrator.

"(B) NOTIFICATION.—(i) In the case of a person carrying out an activity described in subparagraph (A) on the date of the enactment of this paragraph, the person shall notify the Administrator in writing not later than ninety days after such date of the intent to continue carrying out the activity. Such person may continue to carry out the activity (without an identification number) until the date which is one hundred twenty days after the date of the enactment of this paragraph, but only if the person has filed a timely notification.

"(ii) Each person who desires to begin carrying out an activity described in subparagraph (A) after the date of the enactment of this paragraph may notify the Administrator in writing of the intent to begin to carry out such activity at any time after the promulgation of rules under subparagraph (D), but such person may not begin to carry out such activity until the person receives an identification number from the Administrator.

"(C) IDENTIFICATION NUMBER.—Not later than thirty days after the date of receipt of a notification from a person under this paragraph, the Administrator shall, in writing, either issue an identification number to the person or recognize a previously issued EPA identification number as valid for purposes of this paragraph. Any person who has an identification number previously issued by the Administrator under the Solid Waste Disposal Act shall include such number in the notification submitted to the Administrator and shall use that number for purposes of this paragraph unless the Administrator notifies the person that the person must use another identification number for purposes of this paragraph.

"(D) RULES.—Not later than sixty days after the date of the enactment of this paragraph, the Administrator shall promulgate rules to implement this paragraph. Such rules may exempt any person or class of persons from the requirement in subparagraph (A) to notify the Administrator and may provide for assignment of identification numbers which are different from those issued under rules promulgated under the Solid Waste Disposal Act and for assignment of identical numbers to classes of persons. Such rules shall be final and shall take effect on the date of publication in the Federal Register. The Administrator shall provide an opportunity for comment on such rules after their promulgation (unless the Administrator has proposed such rules for public comment before the date of the enactment of this paragraph) and, after considering such comment, shall make any amendments that the Administrator considers appropriate.

"(7) MANIFEST REQUIREMENT.—

"(A) GENERAL REQUIREMENT.—Any person who—

"(i) by contract, agreement or otherwise arranged for transport, storage, or disposal of polychlorinated biphenyl waste generated by such person;

"(ii) transports polychlorinated biphenyl waste for storage or disposal; or "(iii) stores or disposes of polychlorinated biphenyl waste; shall comply with the requirements of the manifest system set forth in rules promulgated by the Administrator under subparagraph (C). If such rules are not promulgated by the effective date of this paragraph, such a person comply with the requirements of the manifest system set forth in rules promulgated under section 3002 of the Solid Waste Disposal Act (42 U.S.C. 6922) until such rules (under subparagraph (C)) are promulgated.

"(B) INITIATION.—A manifest required under this paragraph shall be initiated when either of the following occurs:

"(i) Polychlorinated biphenyl waste leaves a storage facility at which the waste may be stored until such time as it is required to be disposed of, and such storage facility is owned and operated by the same person who owned and operated the equipment in which the polychlorinated biphenyls were used or generated immediately before becoming a waste material.

"(ii) Polychlorinated biphenyl waste leaves the site at which it is generated, and (I) ownership or control of the polychlorinated biphenyl waste is vested in a person other than the person who owned and operated the equipment in which the polychlorinated biphenyls were used or generated immediately before becoming a waste material, or (II) the polychlorinated biphenyl waste is taken to a storage facility owned by a person other than the person with ownership or control of the polychlorinated biphenyl waste when it leaves such site.

"(C) RULES.—Not later than sixty days after the date of the enactment of this paragraph, the Administrator shall promulgate rules to implement a manifest system for polychlorinated biphenyl waste. Such rules may exempt a person or class of persons from the requirements of this paragraph. Such rules shall be final and shall take effect on the date of publication in the Federal Register. The Administrator shall provide an opportunity for comment on such rules after their promulgation (unless the Administrator has proposed such rules for public comment before the date of the enactment of this paragraph) and, after considering such comment, shall make any amendments that the Administrator considers appropriate.

"(D) EFFECTIVE DATE.—This paragraph shall apply with respect to polychlorinated biphenyl waste that, after the effective date of the rules under subparagraph (C) or after the end of the one hundred twenty-day period beginning on the date of the enactment of this paragraph (whichever is later), leaves the site at which it is stored for disposal by the person who generated the waste.

"(8) TRANSPORTATION REQUIREMENT.—

"(A) GENERAL REQUIREMENT.—Any person who transports polychlorinated biphenyl waste for storage or disposal shall comply with the requirements for transportation set forth in rules promulgated by the Administrator under subparagraph (C). If such rules are not promulgated by the effective date of this paragraph, such a person shall comply with the requirements for persons who transport hazardous waste set forth in rules promulgated under section 3003 of the Solid Waste Disposal Act (42 U.S.C. 6923) until such rules (under subparagraph (C)) are promulgated.

"(B) INITIATION.—The transportation requirements under this paragraph shall apply when either of the following occurs:

"(i) Polychlorinated biphenyl waste leaves a storage for disposal facility at which the waste may be stored until such time as it is required to be disposed of, and such storage facility is owned and operated by the same person who owned and operated the equipment in which the polychlorinated biphenyls were used or generated immediately before becoming a waste material.

"(ii) Polychlorinated biphenyl waste leaves the site at which it is generated, and (I) ownership or control of the polychlorinated biphenyl waste is vested in a person other than the person who owned and operated the equipment in which the polychlorinated biphenyls were used or generated immediately before becoming a waste material, or (II) the polychlorinated biphenyl waste is taken to a storage facility owned by a person other then the person with ownership or control of the polychlorinated biphenyl waste when it leaves such site.

"(C) RULES.—Not later than sixty days after the date of the enactment of this paragraph, the Administrator shall promulgate rules regarding transportation of polychlorinated biphenyl waste. Such rules shall be final and shall take effect on the date of publication in the Federal Register. The Administrator shall provide an opportunity for comment on such rules after their promulgation (unless the Administrator has proposed such rules for public comment before the date of the enactment of this paragraph) and, after considering such comment, shall make any amendments that the Administrator considers appropriate.

"(D) Effective date.—This paragraph shall apply with respect to polychlorinated biphenyl waste accepted for transport after the end of the ninety-day period beginning on the date of the enactment of this paragraph.

"(9) Storage Approval Requirement.—

"(A) General requirement.—Beginning two hundred and seventy days after the date of the enactment of this paragraph, a person may not store polychlorinated biphenyl waste (except as provided in subparagraph (E)) unless the person has approval under this paragraph from the Administrator.

"(B) Determinations by administrator.—The Administrator shall grant approval under this paragraph if the Administrator determines that—

"(i) the person is qualified to engage in the activity of storage of polychlorinated biphenyl waste;

"(ii) the person has certified compliance with the requirements for facilities storing polychlorinated biphenyl waste;

"(iii) the person has submitted an acceptable closure plan for the person's storage facility;

"(iv) the person has demonstrated financial responsibility in accordance with rules promulgated under paragraph (10); and

"(v) the person has met any other requirements that the Administrator considers appropriate.

"(C) REQUESTS FOR APPROVAL.—(i) In the case of a person storing polychlorinated biphenyl waste on the date of the enactment of this paragraph, the person shall file a request for approval under this paragraph not later than ninety days after such date. Such person may continue to store polychlorinated biphenyl waste (without approval from the Administrator) until the date which is two hundred and seventy days after the date of the enactment of this paragraph, but only if the person has filed a timely request for approval.

"(ii) Each person who desires to begin storing polychlorinated biphenyl waste after the date of the enactment of this paragraph may file a request for approval of such storage at any time after promulgation of rules under this paragraph, but such person may not begin such storage until the person receives approval from the Administrator.

"(D) RESPONSE TO REQUESTS.—Not later than one hundred and eighty days after the receipt of a request for approval under this paragraph, the Administrator shall approve or disapprove, in writing, the request.

"(E) EXCLUSIONS.—(i) Subparagraph (A) does not apply to any person storing polychlorinated biphenyl waste that consists solely of polychlorinated biphenyl waste generated by—

"(I) that person;

"(II) a corporate parent to that person;

"(III) a corporate subsidiary of that person;

"(IV) a corporate subsidiary of the same corporate parent as the corporate parent of that person; or

"(V) any combination of persons listed in subclauses (I) through (IV).

"(ii) The exclusion in clause (i) does not apply to a person who generated the polychlorinated biphenyl waste in rebuilding, repairing, or recycling electrical equipment that the person did not use, or will not use, in an electrical system owned by such person.

"(iii) A person with approval from the Administrator to dispose of polychlorinated biphenyl waste may continue to carry out the activities associated with such disposal (including storage) without having to obtain additional approval under this paragraph. However, nothing in this clause prevents the Administrator from modifying or revoking approvals under paragraph (11).

"(F) RULES.—Not later than sixty days after the date of the enactment of this paragraph, the Administrator shall promulgate rules to implement this paragraph. Such rules shall contain information requirements for persons filing requests for approval and criteria to be applied by the Administrator in granting or denying such approvals. Such rules shall be final and shall take effect on the date of publication in the Federal Register. The Administrator shall provide an opportunity for comment on such rules after their promulgation (unless the Administrator has proposed such rules for public comment before the date of the enactment of this paragraph) and, after considering such comment, shall make any amendments that the Administrator considers appropriate.

"(10) FINANCIAL RESPONSIBILITY, CONTINGENCY PLAN, AND CLOSURE AND POST-CLOSURE REQUIREMENTS.—

"(A) GENERAL REQUIREMENT.—Any person who—

"(i) requires approval from the Administrator under paragraph (9) to store polychlorinated biphenyl waste; or

"(ii) requires approval from the Administrator under rules promulgated under paragraph (1) to dispose of polychlorinated biphenyl waste;

shall comply with the financial responsibility, contingency plan, and closure and post-closure requirements set forth in rules promulgated under subparagraph (B). If such rules are not promulgated by the effective date of this paragraph, such a person shall comply with the financial responsibility, contingency plan, and closure and post-closure requirements set forth in rules promulgated under section 3004 of the Solid Waste Disposal Act (42 U.S.C. 6924) until such rules (under subparagraph (B)) are promulgated.

"(B) RULES.—Not later than sixty days after the date of the enactment of this paragraph, the Administrator shall promulgate rules regarding financial responsibility, contingency plan, and closure and post-closure requirements for persons who store or dispose of polychlorinated biphenyl waste. Such rules shall be final and shall take effect on the date of publication in the Federal Register. The Administrator shall provide an opportunity for comment on such rules after their promulgation (unless the Administrator has proposed such rules for public comment before the date of the enactment of this paragraph) and, after considering such comment, shall make any amendments that the Administrator considers appropriate.

"(C) EFFECTIVE DATE.—This paragraph shall apply with respect to persons who store or dispose of polychlorinated biphenyl waste after the end of the one hundred and eighty-day period beginning on the date of the enactment of this paragraph.

"(11) MODIFICATION AND REVOCATION OF APPROVALS.—

"(A) MODIFICATION.—Each approval for storage of disposal under this subsection shall be reviewed no later than five years after the date of issuance or reissuance of the approval and shall be modified as necessary to assure that the person with approval continues to comply with the currently applicable requirements of this subsection. Nothing in this paragraph shall preclude the Administrator from reviewing and modifying an approval at any time during the term for which the approval was given to assure such continued compliance. Each approval under this subsection issued after the date of the enactment of this paragraph shall be for a fixed term.

"(B) Revocation.—Upon a determination by the Administrator of noncompliance by a person having approval for storage of disposal under this subsection with the requirements of this subsection, the Administrator may revoke such approval.

"(C) Rules.—The Administrator may promulgate rules to implement this paragraph.

"(12) Mandatory Inspections.—At least once every two years, beginning with the two-year period that begins on the date of the enactment of this paragraph, the Administrator shall thoroughly inspect the facilities at which each person with approval under this subsection to store or to dispose of polychlorinated biphenyl waste carries out such storage or disposal.

"(13) Notice of Enforcement Actions.—Notwithstanding the limitations of section 14, not later than June 30 of each year the Administrator shall publish in the Federal Register a notice of the identity of, and the amount of civil penalty assessed from, each person against who the Administrator has concluded an enforcement action for violations of this subsection during the previous calendar year. Subject to the limitations of section 14, the notice shall also include such other information as the Administrator considers appropriate. For purposes of this paragraph, the Administrator has concluded an enforcement action against a person for a violation of this subsection when one of the following occurs:

"(i) An order by the Administrator assessing a civil penalty from such person has become a final order (or, if such order is appealed, a final judgement has been entered by the court reviewing such order).

"(ii) A court has entered a final judgement with respect to any civil action described in section 17 against such person.

"(iii) The Administrator and such person have entered into an agreement which has been entered into the appropriate district court of the United States as a consent decree.

"(14) DEFINITIONS.—For purposes of paragraphs (6) through (13)—

"(A) The term 'generate' means to produce polychlorinated biphenyl waste by causing it to come into existence or causing it to become a polychlorinated biphenyl waste as described in rules promulgated under paragraph (11) of this subsection.

"(B) The term 'polychlorinated biphenyl waste' means all polychlorinated biphenyls and items containing polychlorinated biphenyls the disposal of which is regulated by the Administrator pursuant to rules promulgated under paragraph (1) of this subsection.

"(C) The term 'storage' means storage (for disposal of polychlorinated biphenyls) that is regulated by the Administrator pursuant to rules promulgated under paragraph (1) of this subsection.

"(D) The terms used in such paragraphs that are defined in the rules promulgated under paragraph (1) of this subsection shall have the meanings given such terms by such rules.".

SEC. 3. The Resource Conservation and Recovery Act is amended by adding a new section as follows:

"REGULATION OF POLYCHLORINATED BIPHENYLS

"SEC. 3021. Effective six months from the date of enactment of this section, polychlorinated biphenyls shall be deemed to satisfy the criteria of section 3001 and the generation, storage, treatment, and disposal of polychlorinated biphenyls shall be regulated pursuant to the requirements of this act in lieu of the requirements of the Toxic Substances Control Act, 15 USC 2601, et. seq. Not later than two years after the date of enactment of this section, the regulations, and other actions, taken under the authority of section 6(e) of such act shall be reviewed by the Administrator and, where necessary, revised to protect human health and the environment or otherwise satisfy the requirements of this act. Regulations, orders, rules, permits, grants, contracts, licenses or privileges, or any other action, taken or issued under the authority of the Toxic Substances Control Act with respect to the generation, storage, treatment and disposal of polychlorinated biphenyls shall remain in full force and effect until rescinded or replaced.".

SEC. 4. The Toxic Substances Control Act is amended by adding a new section 6(e)(6) as follows:

"(6) Effective six months after the date of enactment of this subsection, the generation, storage, treatment and disposal of polychlorinated biphenyls shall be regulated pursuant to the requirements of the Resource Conservation and Recovery Act.".

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